

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Cung Le, Nathan Quarry, Jon
Fitch, Brandon Vera, Luis
Javier Vazquez, and Kyle
Kingsbury on behalf of
themselves and all others
similarly situated,

Case No.:

2:15-cv-01045-RFB-BNW

Plaintiffs,

v.

Zuffa, LLC, d/b/a Ultimate
Fighting Championship and
UFC,

Defendant.

TRANSCRIPT OF HEARING BEFORE
THE HONORABLE RICHARD FRANKLIN BOULWARE, II
September 23, 2019
9:33 a.m. - 12:13 p.m.
Richmond, Virginia

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I N D E X

WITNESS	DIRECTCROSS	REDIRECT	RECROSS
JOSEPH SILVA			
By Mr. Cramer	9		114
By Ms. Grigsby		80	

1 (September 23, 2019, 9:33 a.m.)

2 P R O C E E D I N G S

3 - - -

4 THE COURT: All right. Counsel, we are
5 here as a continuation on the Zuffa matter,
6 2:15-cv-01045.

7 Counsel, please announce your presence
8 for the record.

9 MR. CRAMER: Good morning, Your Honor.
10 Eric Cramer for the plaintiffs.

11 MR. SUTER: Good morning, Your Honor.
12 Mark Suter for the plaintiffs.

13 MR. MADDEN: Good morning, Your Honor.
14 Patrick Madden for the plaintiffs.

15 MS. GRIGSBY: Good morning, Your Honor.
16 Stacey Grigsby for Zuffa.

17 MR. ISAACSON: Good morning, Your
18 Honor. Bill Issacson for Zuffa.

19 MS. LYNCH: Good morning, Your Honor.
20 Marcy Lynch for Zuffa.

21 MR. NAKAMURA: Good morning, Your
22 Honor. Brent Nakamura for Zuffa.

23 THE COURT: Good morning. So I wanted
24 to do a few things first. I'm going to pull
25 up this matter here.

1 Is there anything that we need to
2 address before we start Mr. Silva's testimony?

3 Mr. Cramer?

4 MR. CRAMER: I don't think so, Your
5 Honor.

6 THE COURT: I'm going to go through my
7 rulings on the motions to seal. So here we
8 go.

9 Document Number 602, I'm going to grab,
10 that's the expert report of the witness --
11 expert witnesses, Mr. Singer, Mr. Topel, Mr.
12 Zimbalist, Mr. Blair, Mr. Manning and Mr.
13 Oyer.

14 Documents 608, 614, 622, 630, 635, 637,
15 656, 659, and 665, those motions to seal are
16 granted.

17 Documents Number 641 and 648 are
18 denied.

19 And Document Number 626 is denied
20 without prejudice as moot.

21 I'm saying that now, Mr. Cramer and
22 Ms. Grigsby, so that you all can look at
23 those, and if we have questions about them,
24 you'll let me know.

25 My intention was essentially to grant

1 the motions as they apply to most matters
2 except for the reports that have already been
3 unsealed.

4 And then one of the motions was denied
5 because we already addressed the issue of what
6 would be the procedures in court regarding the
7 class certification hearings.

8 Ms. Grigsby, you may want to look
9 specifically at 641 and 648 at some point when
10 we have a break, if you have questions about
11 that, because those are motions that I am
12 denying as it relates to sealing.

13 MS. GRIGSBY: Yes, Your Honor.

14 THE COURT: All right. Now, in this
15 case I understand Mr. Silva still has some
16 difficulty reading documents. Is Mr. Silva
17 here?

18 MR. SILVA: Yes, Your Honor.

19 THE COURT: Okay, Mr. Silva. So we
20 appreciate you accommodating us in your
21 schedule. And if you're having any
22 difficulties whatsoever that relates to being
23 able to see or understand or you need a break,
24 please do not hesitate to let me know, because
25 I want to make sure that we are appropriately

1 supportive of your rehabilitation. And if you
2 just get tired from looking at things, let me
3 know.

4 We're going to try to just have the
5 lawyers read things to you as necessary, and
6 then we'll take it from there.

7 And in this case, I'm not sure -- I'm
8 going to give you all a little bit more time
9 for Mr. Silva. So I'm going to give you all
10 about an hour and 15 minutes or so each side,
11 an hour and 15, hour and 30. We'll see how
12 that goes.

13 I don't know that we'll need that much
14 time, but because I want to make sure that
15 Mr. Silva is comfortable with the testimony in
16 terms of his ability to do it comfortably, we
17 may have to take some breaks.

18 MR. CRAMER: Your Honor, you had
19 initially said that the plaintiffs would get
20 an hour for direct and a half hour for
21 redirect or hour for cross, half hour for
22 recross. I don't know that I'll need a half
23 hour for recross. I'll probably only need a
24 little bit, but I just wanted to reserve a few
25 minutes for --

1 THE COURT: That's fine. I mean, an
2 hour and a half is fine. I mean, again, I
3 don't know that we'll need that much time.

4 MR. CRAMER: I agree.

5 THE COURT: And so -- and I don't know
6 if I had explicitly ruled on what would be the
7 order of who would go first or second.

8 MR. CRAMER: Your Honor had said that
9 the plaintiffs would go first --

10 THE COURT: That's right.

11 MR. CRAMER: -- and then Zuffa would
12 go, and the plaintiffs would get some
13 opportunity to requestion the witness.

14 THE COURT: Okay. Perfect then. Why
15 don't we get started.

16 MR. CRAMER: Thank you, Your Honor.

17 THE BAILIFF: Does he need to be sworn?

18 THE COURT: Yes.

19 THE BAILIFF: Can you raise your right
20 hand, please, and face the deputy clerk right
21 there. Thank you.

22 JOSEPH SILVA,
23 first duly sworn, testified as follows:

24 - - -

25 MR. CRAMER: Your Honor, I have my

1 trusty assistant at the Elmo. He will be
2 putting documents up for me as I request them.

3 THE COURT: Okay.

4 MR. CRAMER: Thank you.

5 - - -

6 D I R E C T

7 E X A M I N A T I O N

8 BY MR. CRAMER:

9 Q Good morning, Mr. Silva.

10 A Good morning.

11 Q Thank you for being here today.

12 All right. So, Mr. Silva, you started
13 working for the UFC around 1994 as a technical
14 advisor; is that right?

15 A That's correct.

16 Q And that was before Zuffa had purchased the
17 UFC; is that right?

18 A Yes, sir.

19 Q Okay. And when Zuffa bought the UFC in
20 about 2001, you continued to work for the UFC; is
21 that right?

22 A Correct.

23 Q Okay. And it was about that time that you
24 became vice president of talent relations; is that
25 right?

1 A Yes.

2 Q Okay. And you worked for the UFC until
3 December 31, 2016; is that right?

4 A Correct.

5 Q So you worked for the UFC for about 22
6 years?

7 A Yes.

8 Q Okay. And 15 of those years were spent
9 working for Zuffa; is that right?

10 A Yes.

11 Q And your departure from Zuffa was, in your
12 words, as you told me at your deposition, very
13 amicable. Is that true?

14 A Yes.

15 Q And during your time with Zuffa, you worked
16 closely with fellow UFC executives; is that right?

17 A Yes.

18 Q Okay. And you worked with UFC president
19 Dana White; is that right?

20 A Correct.

21 Q And you worked with CEO Lorenzo Fertitta; is
22 that right?

23 A Yes.

24 Q And you worked with Sean Shelby, right?

25 A Yes.

1 Q And he was a matchmaker for the UFC?

2 A Yes.

3 Q And you were a matchmaker for the UFC?

4 A Correct.

5 Q Okay. You worked --

6 THE COURT: Excuse me, Mr. Cramer.

7 Mr. Silva, can you tell me what a
8 matchmaker is?

9 THE WITNESS: The way that it was used
10 is more almost of a nickname. My official
11 title was vice president of talent relations.
12 I actually served a lot of different jobs for
13 the UFC, but the one that people really knew
14 me for is somebody who would decide who would
15 actually fight who.

16 So a matchmaker is the person who is
17 making the matches. But I would scout talent,
18 sign them to contracts, decide who would fight
19 who on what shows.

20 THE COURT: So you would propose that,
21 and would there be someone else who would
22 ultimately decide that afterwards? So would
23 there be -- would Mr. White, for example,
24 approve the lineup that you had proposed or
25 the ticket that you had set up?

1 THE WITNESS: Yes. Dana would have to
2 sign off in the end. For most of the early
3 fights on the card, he would leave it to my
4 discretion, but certainly when we got to main
5 events, co-main events, things like that, then
6 him and Lorenzo would definitely want to sign
7 off on those.

8 THE COURT: Okay. And how many fights
9 per event or per ticket occurred normally?

10 THE WITNESS: On an average card, we'd
11 do 13 fights on a card.

12 THE COURT: Okay. Thank you.

13 Go ahead, Mr. Cramer.

14 MR. CRAMER: Sure.

15 BY MR. CRAMER:

16 Q And you worked with employees and executives
17 in Zuffa's legal department; is that fair?

18 A Yes.

19 Q You worked Tracy Long in the legal
20 department?

21 A Yes.

22 Q Yes?

23 A Yes, sir.

24 Q Okay. And you worked with Michael Mersch;
25 that's right?

1 A Yes.

2 Q He was the general counsel; is that right?

3 A Yes.

4 Q Okay. And you're still to this day, or at
5 least as of the day of your deposition, in contact
6 with Sean Shelby; is that right?

7 A Yeah. We'll text during fights and such.

8 Q Okay. And you're still in contact with
9 UFC's Mike Maynard; is that right?

10 A Mick Maynard.

11 Q Mick. I'm sorry. I misread it.

12 A Yes.

13 Q Okay. And both Sean Shelby and Mick Maynard
14 are current UFC matchmakers; is that right?

15 A That's correct.

16 Q Okay. And in your mind, after 22 years of
17 working with people at the UFC, you have a strong
18 bond with some of those people; is that fair?

19 A Yes.

20 Q Okay. And you recall I took your deposition
21 in this case in June of 2017, approximately?

22 A Yes.

23 Q Okay. And you have reviewed the transcript
24 or part of it as part of your preparation for
25 today; is that right?

1 A I have.

2 Q Okay. Zuffa's lawyer, Mr. Isaacson,
3 represented you at your deposition in this case?

4 A Yes.

5 Q And Zuffa's lawyers arranged for you to come
6 to this hearing today?

7 A Yes.

8 Q And Zuffa's counsel is representing you here
9 today?

10 A Correct.

11 Q And that's the counsel sitting at counsel
12 table; is that right?

13 A Yes.

14 Q Okay. Thank you.

15 All right. Starting in 2001 with Zuffa's
16 purchase of the UFC, and we talked about this a
17 little bit, but your job responsibilities included
18 helping pair up fighters for bouts; is that right?

19 A Yes.

20 Q And your responsibilities also included
21 searching for new talent to fight in the UFC; is
22 that right?

23 A Yes.

24 Q And you were one of the people at Zuffa
25 responsible for negotiating and signing fighters to

1 contracts with the UFC?

2 A Yes.

3 Q Okay. You negotiated deals, I think you
4 told me at your deposition, with at least 1,000
5 fighters during your career at the UFC. Does that
6 sound right?

7 A Yes.

8 Q Okay. Early in your tenure with UFC, you
9 were the primary person negotiating fighter
10 contracts; is that right?

11 A Yes.

12 Q And then later you shared some of those
13 responsibilities with Sean Shelby?

14 A Correct.

15 Q Okay. During the period in which you and
16 Sean Shelby shared fighter contract negotiation
17 responsibilities, you and Mr. Shelby negotiated the
18 vast majority of fighter contracts; is that right?

19 A Probably 85 percent.

20 Q And the rest were negotiated by Mr. White or
21 Mr. Fertitta?

22 A Correct.

23 Q Okay. And you and Sean Shelby were in
24 constant communication and knew what each of you
25 were offering the respective fighters; is that

1 right?

2 A I did not -- that was not something that we
3 would constantly talk about, no.

4 Q But did you generally have -- were you
5 generally aware with the offers that Mr. Shelby was
6 making to fighters?

7 A No.

8 Q Okay. When negotiating fighter contracts,
9 you would typically start by making offers to
10 fighters with two basic terms, the number of bouts
11 and the amount of compensation per bout; is that
12 right?

13 A Yes.

14 Q Okay. And if a fighter accepted your offer,
15 you informed Zuffa's legal department what the
16 terms were for bouts and compensation, and the
17 legal department incorporated those terms into a
18 standard promotional and an ancillary rights
19 agreement for the fighter to sign; is that right?

20 A Correct.

21 Q And sometimes the promotional and ancillary
22 rights agreement is called PAR; is that right?

23 A It's called what?

24 Q PAR. You don't call it a PAR?

25 A No.

1 Q Okay. I only call it a PAR. I'll keep it
2 to myself.

3 All right. In negotiating compensation with
4 fighters, your shorthand typically involves these
5 two numbers that we just talked about?

6 THE COURT: And what did you call those
7 numbers? Was there any internal term for
8 these numbers?

9 MR. CRAMER: I misstated it. Let me
10 state it again and then I think it will help,
11 because I didn't read the full question.

12 THE COURT: Okay.

13 BY MR. CRAMER:

14 Q The two numbers were the pay for appearing
15 in the bout, and the second number was the pay for
16 winning the bout; is that right?

17 A Correct. Yeah. So we would term it show
18 and win.

19 Q Show and win.

20 THE COURT: Mr. Silva, at this time, I
21 just want to be clear, the fighters were never
22 paid an annual or any type of seasonal salary;
23 is that correct?

24 THE WITNESS: No.

25 THE COURT: They were paid per fight

1 that they actually fought?

2 THE WITNESS: Correct. That was the
3 majority. There was some whose contracts are
4 slightly structured differently, but the
5 majority were per bout.

6 THE COURT: So about -- when you say
7 "majority," it would be 95 percent of them
8 were per bout; is that --

9 THE WITNESS: I would say that's
10 correct.

11 THE COURT: Okay. Thank you.

12 Go ahead, Mr. Cramer.

13 BY MR. CRAMER:

14 Q Just to follow up on His Honor's questions,
15 the UFC didn't provide benefits to fighters as if
16 they were employees; right?

17 A They did end up implementing a form of
18 insurance for fight-related injuries.

19 Q So at some point there was insurance for
20 fight-related injuries. But the UFC didn't provide
21 general insurance for fighters' families and their
22 general health care?

23 A No.

24 Q And the UFC didn't have a 401(k) plan for
25 the fighters, correct?

1 A Correct.

2 Q And the UFC did not pay in general for the
3 fighters' trainers, correct?

4 A Correct.

5 Q And the UFC didn't pay the gym fees for the
6 fighters when they were training, correct?

7 A Correct.

8 Q All right. That's those questions. So
9 let's go back to the structure of the deal, because
10 some of the questions later we'll need to know the
11 lingo.

12 If a fighter under a 10 and 10 deal for a
13 particular bout fought and lost, that fighter
14 received \$10,000 to show; is that right?

15 A Correct.

16 Q Okay. And if a fighter under a 10 and 10
17 deal fought and won, he would be paid the \$10,000
18 for showing up and the \$10,000 for winning; is that
19 right?

20 A Correct.

21 Q Okay. UFC fighter contracts are typically
22 multi-bout contracts; is that right?

23 A That's correct.

24 Q Okay. And UFC fighter contracts have a
25 compensation provision that sets the level of pay

1 for each bout in the contract typically; is that
2 right?

3 A Yes.

4 Q And the compensation provision is typically
5 structured such that if a fighter wins the first
6 fight in the contract, he or she moves up to the
7 next pay level in the contract for the next fight;
8 is that right?

9 A Correct.

10 Q But if he or she loses the fight, he or she
11 would typically stay at that first pay level; is
12 that right?

13 A Correct.

14 Q Okay. So, for example, a contract can have
15 a first compensation level of 10 and 10, and a
16 second level of 12 and 12, right?

17 A Yes.

18 Q And if the fighter wins the first bout at 10
19 and 10, the fighter is eligible to make 12 and 12
20 the next fight?

21 A Yes.

22 Q And if the fighter on a 10 and 10, 12 and 12
23 loses the first fight, the fighter then makes 10
24 and 10 for the next fight; is that right?

25 A Yes.

1 Q Okay. All right. You would agree with me,
2 as you did at your deposition, that Zuffa bought --
3 that after Zuffa bought the UFC, you imposed what
4 you told me was kind of an unofficial compensation
5 structure that included a minimum pay, bout pay
6 level for all fighters; is that right?

7 A I did say that we had a minimum amount that
8 we paid, yes.

9 Q And, for example, I asked you at 347: "And
10 by 'minimum compensation,' the UFC had kind of a
11 compensation structure where there was a -- kind of
12 minimum and then you worked up from there?"

13 And you said: "Correct."

14 Is that fair? Is that correct? Do you
15 recall that?

16 A It is correct that we had a minimum, yes.

17 Q Okay. And I'm going to put up on the screen
18 a document that's JCCX-8, it is entitled Minimum
19 Fighter Pay, dated January 2015. And we're hoping
20 that that comes up on the screen.

21 THE COURT: Give us a second.

22 MR. CRAMER: Here we are.

23 MR. MADDEN: You can use my computer.

24 MR. CRAMER: We don't want the

25 computer. We want the Elmo. All right.

1 Well, while we're waiting for the Elmo, I
2 think we can try to bring it up on my
3 colleague's computer.

4 THE COURT: Switch over to the computer
5 so --

6 THE CLERK: To which? Plaintiffs'?

7 MR. CRAMER: Yeah, plaintiffs'
8 computer.

9 BY MR. CRAMER:

10 Q All right. So I asked you about this
11 document at your deposition. Please turn to page 3
12 of this document. It's 5316, ZFL-0895316. And
13 this page is entitled Moving the Minimum.

14 And we discussed this document at your
15 deposition. The page evaluates a proposal within
16 Zuffa to increase the minimum compensation of UFC
17 fighters from its then current level of 8,000 to
18 show and 8,000 to win for the first fighter
19 contract of a fighter's UFC career.

20 Do you recall that?

21 A I do.

22 Q Okay.

23 THE COURT: I'm sorry. Mr. Silva, who
24 created this document?

25 THE WITNESS: Denitza, I'm not sure of

1 her last name.

2 MR. CRAMER: Batchvarova.

3 THE WITNESS: Yeah, that's right.

4 THE COURT: And that was someone who
5 worked at UFC?

6 THE WITNESS: Yes, sir.

7 BY MR. CRAMER:

8 Q And you were part of the conversation while
9 you were at UFC considering whether to raise the
10 minimum pay level in or around this time, correct?

11 A I was consulted.

12 Q Okay. And if you look at the first -- all
13 right. If you look at the first column under
14 Fighter Contracts, I don't know if you can see it
15 or not, but there's a column that says First
16 Contract. The current is 8,000 to show and 8,000
17 to win.

18 And then under the -- there are three
19 different proposals in the next columns to the
20 right. The next column starts with a 10,000
21 minimum, and that starts at 10,000 to show and
22 10,000 to win.

23 Does that sound right?

24 A Yes.

25 Q Okay. And then as part of the process in or

1 around 2015, the UFC, in fact, adopted a proposal
2 to increase the minimum compensation level under
3 which all UFC fighters would make at least 10 and
4 10 for the first fight, the first contract; is that
5 right?

6 A Yes.

7 Q Okay. So before the proposal to raise the
8 UFC's fighters' minimum compensation in or about
9 this time, the UFC's standard offer for the first
10 contract was a four-fight deal that would pay 8 and
11 8 for the first fight; is that right?

12 A That's incorrect.

13 Q One of the -- you did have contracts that
14 you did offer 8 and 8 for the first fight?

15 A That was the least that we could offer.

16 Q That was the least that you could offer.

17 And for the least that you could offer, the
18 structure of the contract would be 8 and 8 for the
19 first fight, 10 and 10 for the second fight, 12 and
20 12 for the third fight, and 14 and 14 for the
21 fourth fight?

22 A Correct.

23 Q And then the least that you could offer
24 after this change, everything bumped up by 2; 10
25 and 10; 12 and 12; 14, 14; 16, 16; is that right?

1 A Yes.

2 Q Okay. All right. I'd like now to display
3 another document we discussed at your deposition,
4 it's PCCX-391, and it contains a series of
5 e-mails between --

6 THE COURT: Hold on just a second,
7 Mr. Cramer.

8 Mr. Silva, was it standard then for new
9 fighters to get the minimum contract when they
10 first came into the UFC?

11 THE WITNESS: Your Honor, it would
12 depend on the fighter themselves. There's a
13 lot of fighters in the first UFC that did not
14 get that. It just depended on what their
15 qualifications were coming in. There's people
16 who certainly had more experience than others,
17 people who had made more a name for themselves
18 on a local level, so therefore they are worth
19 more than the minimum to me.

20 THE COURT: What --

21 THE WITNESS: We just wanted to make
22 sure that there was levels that nobody would
23 get less than, that nobody was locked into
24 that's what you had to come in at.

25 THE COURT: What percentage of the

1 fighters when they came into the UFC, first
2 came in, would get the minimum contract?

3 THE WITNESS: I'm not sure of the exact
4 percentage. And I think a lot of that was
5 affected by people who ended up coming in late
6 notice, which there ended up being a lot of,
7 as will come up there that -- we have a lot of
8 injuries in our sport.

9 THE COURT: So hold on. I'll return to
10 that.

11 So at the time you were there,
12 obviously there was a great change in the
13 number of fighters that were under contract
14 with the UFC; is that right?

15 THE WITNESS: Correct.

16 THE COURT: And then at certain points
17 in time, there's certain organizations that
18 were either acquired or went out of business
19 when you were there; is that right?

20 THE WITNESS: Yes.

21 THE COURT: And so over the course of
22 time that you were there, let's say starting
23 around 2010, were most of the new fighters
24 coming in from other comparable organizations
25 like Strikeforce or were they coming from

1 essentially lower level MMA promoters?

2 THE WITNESS: They came from all over
3 the world. And sometimes if we had acquired
4 somebody like Strikeforce, and you had a
5 certain amount of people all coming in at
6 once, but I had a bunch of different weight
7 classes, so it still didn't necessarily fit
8 everybody that I needed.

9 I could -- would actually overload some
10 weight classes, but I still had to go outside
11 to get other fighters to fill weight classes I
12 didn't have.

13 Like, say that Strikeforce didn't
14 utilize certain weight classes, but we had
15 them, so we still had to find talent from
16 elsewhere to fill those classes.

17 THE COURT: Okay. At the time after
18 the Strikeforce acquisition, when you say you
19 had to go outside of the UFC to staff -- I
20 shouldn't say staff -- to identify fighters
21 for bouts, how often -- what percentage of
22 time did you have to do that?

23 My understanding is that a fair number
24 of fighters by that time actually were under
25 contract to Zuffa.

1 So how often would you have to go
2 outside of your own group of fighters to set
3 up or to identify fights for a ticket?

4 THE WITNESS: Constantly. It was a
5 never-ending process. There was pretty much
6 never a time when I didn't sign people.

7 There would be times where I couldn't
8 sign people for a particular weight class. It
9 could be like, at 155 pounds, I have too many
10 guys at this moment; we had an acquisition and
11 it gave me too many of those guys. But at 135
12 or at heavyweight, which is a class that it's
13 always lacking in talent, it's like I do need
14 guys for that.

15 So there would be times where I might
16 sign a heavyweight and people would come in
17 and go, wait, you said you weren't signing
18 guys. I'm not signing guys in these weight
19 classes; I desperately still need guys in
20 these other weight classes.

21 THE COURT: So you're saying that there
22 might be individual weight classes where you
23 would still have a need at different points in
24 time?

25 THE WITNESS: Yes, sir. That's

1 something that changed dramatically through
2 the evolution of Zuffa as it grew, that we
3 started off with only a handful of weight
4 classes and then we ended up acquiring very
5 many, and then added female weight classes.

6 So all of a sudden you had to divide up
7 that pie bit by bit, and it made it
8 challenging because if you had two weight
9 classes, half your roster could replace in any
10 fight that you needed, but once you had that
11 many, if you have 12 different weight classes,
12 the pool for each weight class that could come
13 in at any time and replace for that fight is
14 much smaller. So if you had a dropout, quite
15 often you had to go outside of your currently
16 assigned pool and find somebody to replace.

17 THE COURT: So when did you increase
18 the weight classes?

19 THE WITNESS: It was a process that
20 happened throughout. It didn't start -- it
21 wasn't like all of a sudden a huge amount of
22 weight classes. From the very beginning of
23 the UFC, it started out as an open weight
24 show. In the very original UFC, there was no
25 weight class, it was just anybody could fight

1 anybody. Then it broke into two weight
2 classes, then three weight classes, then it
3 just kept --

4 THE COURT: Just to sort of focus
5 around the time period, around 2010, how many
6 weight classes were there?

7 THE WITNESS: I'm not great with dates.
8 But it was increasing all throughout. By
9 2010, I'm guessing --

10 THE COURT: So before Strikeforce, the
11 acquisition, about how many weight classes did
12 you have?

13 THE WITNESS: There was a time when we
14 had 155, 170, 185, light heavyweight and
15 heavyweight, and I did all of the matches.

16 We had another show that we acquired
17 that was separate called the WEC, and they
18 focused on smaller weight classes. They also
19 had 155, which I did, because it's such a good
20 weight class, but they also had 145 and 135
21 that we didn't have.

22 We ended up incorporating the WEC into
23 the UFC, so it brought those wight classes
24 over. Then we added another smaller men's
25 weight class.

1 Strikeforce had women's weight
2 divisions, which we did not have when we
3 acquired Strikeforce, and it brought in
4 women's divisions. Then we ended up, once we
5 had a woman's division, adding multiple
6 women's divisions.

7 THE COURT: So before Strikeforce, and
8 that Strikeforce acquisition, you had women's
9 divisions?

10 THE WITNESS: No. They were -- it
11 was when we acquired Strikeforce that we first
12 ever got a women's division.

13 THE COURT: So you had no women
14 fighters before the acquisition of
15 Strikeforce?

16 THE WITNESS: Correct.

17 THE COURT: Okay. And how many weight
18 divisions did you have for women when you
19 acquired Strikeforce?

20 THE WITNESS: At the time, I believe
21 just one.

22 THE COURT: And as I understand it, you
23 had five, approximately five, is that right,
24 if my math is correct, weight classes before
25 the acquisition of Strikeforce? Is that

1 right?

2 THE WITNESS: Before WEC. Before we
3 acquired WEC.

4 THE COURT: Okay. All right. Thank
5 you, Mr. Silva.

6 Go ahead, Mr. Cramer.

7 BY MR. CRAMER:

8 Q Because His Honor asked you some questions
9 about Strikeforce and acquisitions, I'm going to
10 skip to the questions about that, because I think
11 they're relevant and right to this issue.

12 One of your goals in your work --

13 THE COURT: Hold on just a second,
14 Mr. Cramer. We're going to see if we can't
15 get the Elmo to work. Just a second.

16 MR. CRAMER: Thank you.

17 I have some questions before I need to
18 get to the documents, so do you mind --

19 THE COURT: We can proceed.

20 MR. CRAMER: Okay. So let's proceed.

21 BY MR. CRAMER:

22 Q One of your goals in your work at Zuffa was
23 to find fighters that you could match against each
24 other to create bouts that audiences wanted to see
25 you create, correct?

1 A Correct.

2 Q And as you told me at your deposition, one
3 of Zuffa's goals --

4 THE COURT: Excuse me. I'm sorry.

5 MR. CRAMER: Thank you.

6 BY MR. CRAMER:

7 Q -- one of Zuffa's goals for its acquisitions
8 of promoters was to acquire fighters from other
9 promoters to put in Zuffa's shows; is that right?

10 A Correct.

11 Q Okay. In your opinion, as you expressed at
12 your deposition, from 2007 through the date of your
13 deposition, the UFC had more of the top talent than
14 any other MMA promotion, correct?

15 A In my opinion, yes.

16 Q You're familiar with the organization that
17 formally operated as Pride Fighting Championship,
18 correct?

19 A Yes.

20 Q And you believe that Pride was potentially
21 at the same competitive level as the UFC in or
22 about 2006; correct?

23 A Actually, some people felt it was superior.

24 Q And the UFC acquired Pride?

25 A We did.

1 Q And you would agree with me now, as you did
2 at your deposition, that when Zuffa purchased
3 Strikeforce, Zuffa took out its largest competitor
4 at the time, correct? It purchased its largest
5 competitor?

6 A Yes.

7 Q And one reason that Zuffa purchased
8 Strikeforce was to obtain Strikeforce's fighter
9 contracts, correct?

10 A Yes.

11 Q And Strikeforce -- as you just testified in
12 response to His Honor's questions, Strikeforce had
13 fighter talent and weight classes, like female
14 divisions, that the UFC did not have at that time,
15 correct?

16 A Correct.

17 Q Okay. Now I'd like to show you a document
18 dated February of 2011, this is an e-mail that you
19 wrote to Mr. White, Fertitta, and Sean Shelby. And
20 I asked you about --

21 THE COURT: Hold on just a moment.

22 Can you read that okay?

23 THE WITNESS: I can, yes.

24 BY MR. CRAMER:

25 Q Okay. So showing you the top of it, the

1 subject is: "We own MMA."

2 THE COURT: Do you want to offer this
3 as an exhibit, Mr. Cramer?

4 MR. CRAMER: Yes. This is Exhibit
5 PCCX-365, and it starts with the Bates number
6 ZUF-00085896.

7 BY MR. CRAMER:

8 Q And this is an e-mail you sent and wrote,
9 correct?

10 A Correct.

11 Q And the subject "We own MMA" was your
12 characterization, correct?

13 A Yes.

14 Q And by "we," you meant the UFC and Zuffa,
15 correct?

16 A Yes.

17 Q And the rationale about ownership related to
18 the fact that Zuffa had most of the top fighters in
19 most of the weight classes in February of 2011,
20 correct?

21 A Correct.

22 Q And you're listing those in the document --
23 I'd like to stay at the box there -- listing those
24 in the document. It says that the UFC had 15 out
25 of 25 of the heavyweights, correct?

1 A Correct.

2 Q And 6 out of the top 10, correct?

3 A Yeah.

4 Q And the UFC had 9 out of the top 10 light
5 heavyweights, correct?

6 A Yes.

7 Q And 8 out of the top 10 middleweights,
8 correct?

9 A Yes.

10 THE COURT: Mr. Silva, I'm sorry. When
11 you say there's two categorizations, so, for
12 example, heavyweight it says 16, I think, or
13 15 out of -- 16 out of 25 and -- well, I can't
14 read it, it's too far over -- and 6 out of the
15 top 10. Do you see that?

16 THE WITNESS: Yes, sir.

17 THE COURT: What does 15 out of 25
18 mean?

19 THE WITNESS: So this particular
20 rankings ranked up to 25 fighters, so --

21 THE COURT: Okay. So the top 25
22 fighters?

23 THE WITNESS: Correct. So we had 15
24 out of the top 25. If you broke it down to
25 just the top 10 --

1 THE COURT: Then you'd have 6 out of
2 the top 10?

3 THE WITNESS: 6 out of the top 10.

4 THE COURT: Okay. Perfect. I just
5 wanted to confirm that. Thank you.

6 BY MR. CRAMER:

7 Q And you list lightweight, featherweight and
8 bantamweight, and the UFC either has 8, 6, or 9 out
9 of the top 10 in all of those divisions, correct?

10 A Correct.

11 Q And this was in February of 2011, before the
12 UFC purchased Strikeforce, correct?

13 A Correct.

14 Q So if you turn to the bottom of the page,
15 there is a listing of the heavyweights. And see
16 the -- these are the heavyweight MMA consensus
17 rankings posted January 27, 2011.

18 And am I correct that this is the list of
19 the rankings of the top 23 heavyweight fighters in
20 MMA? Is that right?

21 A Yes.

22 Q Okay. And we'll see that Strikeforce had
23 number 4, number 7, number 10, number 11, number
24 12, number 17; is that right?

25 A Yes.

1 Q And after the acquisition of Strikeforce,
2 the UFC obtained some or all of these fighters that
3 I just mentioned, correct?

4 A Correct.

5 Q Let's look at the next division. And here
6 we have light heavyweights consensus rankings
7 during this period, and we can see the top 25; is
8 that right?

9 A Yes.

10 Q And Strikeforce had 10, 11, 13, and 14 and
11 19. And after the Strikeforce acquisition, I
12 believe the UFC acquired all but Dan Henderson; is
13 that right?

14 A I believe so.

15 Q And eventually UFC got Dan Henderson; is
16 that right?

17 A Yes.

18 Q Okay.

19 A Which Dan Henderson fought for UFC before
20 that.

21 Q Right. Okay.

22 And in this e-mail, as you explained to me
23 at your deposition, you were showing your managers,
24 your bosses, Dana White and Lorenzo, how successful
25 you and Sean Shelby had been at signing the top MMA

1 talent and the majority of the top fighters in all
2 of the divisions you identified, right?

3 A Correct.

4 Q And just to summarize this, you would agree
5 with me that after the Strikeforce acquisition, the
6 UFC's share of the top 25 fighters in all of these
7 weight classes listed went up, higher than it was
8 in February of 2011, correct?

9 A Correct.

10 Q All right. You can put that document aside.
11 All right. Let me turn back to where I was and ask
12 you about -- oh, put up the minimum document.

13 His Honor had a question about the number of
14 fighters being paid at the lower level. I just
15 want to draw your attention to this aspect of the
16 document.

17 The assumptions of the document was that
18 under Tier 1, which is the first tier of percentage
19 of bouts at show, pay tiers, Tier 1 has less than
20 17,000. So am I correct that this --

21 MS. GRIGSBY: Well, I'm just going to
22 object, because he hasn't laid a foundation
23 with this witness that he's knowledgeable. I
24 mean, the witness just testified he didn't
25 know. There's no --

1 THE COURT: Overruled. I'll allow it.
2 He seems to be fairly knowledgeable in this
3 area.

4 So, Mr. Silva, you understand what
5 these tiers were, right?

6 THE WITNESS: Correct. I did not
7 create this document, but --

8 THE COURT: But you understood what the
9 tiers were that were referenced in the
10 document, I assume?

11 THE WITNESS: Yes.

12 THE COURT: Okay. And what are they?

13 THE WITNESS: Well, what you saw them
14 at is the minimum if -- amount that we pay the
15 smallest contract.

16 THE COURT: So Tier 1 would be the
17 minimum amount?

18 THE WITNESS: Correct.

19 THE COURT: And Tier 2 would be what?

20 THE WITNESS: It's anything over that,
21 as it progresses up. But I don't understand
22 how they got to anything above that because it
23 could vary then greatly depending on how well
24 you did.

25 THE COURT: Well, I'm sorry. Are you

1 saying you didn't -- when they created the
2 document, you didn't understand what these
3 tiers were?

4 THE WITNESS: Correct. I disagreed in
5 general with a lot Danny's projections. I did
6 not understand how they got to them.

7 THE COURT: Well, it looks like they're
8 showing actual difference --

9 THE WITNESS: Right. But after a first
10 contract is over --

11 THE COURT: Right.

12 THE WITNESS: -- you might negotiate,
13 as has happened after the second fight of a
14 fighter's contract, and that throws that off.
15 Or you might let them fight their contract
16 out, and that would affect where it goes.

17 I think they're trying to come up with
18 an average, where they're trying to figure it
19 out. But there was no lockstep way of, if
20 this is what the first contract was, this is
21 what the second contract is.

22 BY MR. CRAMER:

23 Q Right. You're saying that pay of UFC
24 fighters reflected their popularity and performance
25 as they went forward, correct?

1 A Correct. And it could vary greatly.

2 Q Right. But you tried to pay fighters in
3 accord with what you believed they were bringing to
4 the table in terms of their performance, how you
5 expected them to perform, and how popular they were
6 with the fans, correct?

7 A Well, there's a lot more things that go into
8 it.

9 THE COURT: Well, what else would go
10 into -- I mean, other than looking at their
11 popularity, their rank, and their ability to
12 draw fans, what else would you look at besides
13 that?

14 THE WITNESS: Well, a huge thing that
15 would affect me is -- which was out of my
16 control, but they would bring to me, is they
17 would go, hey, two months from now we're going
18 to do a show in Poland. And I don't have any
19 Polish fighters. There was nobody in Poland
20 who particularly interested me, but I'd have
21 to go out now and go find some. And is it
22 going to now put a new premium on Polish
23 fighters. This isn't I can take it or leave
24 it. It's like I have to find Polish fighters,
25 and whatever it cost me to get those fighters,

1 I now have to do because they've told me we're
2 doing a show in Poland.

3 THE COURT: Well, I understand that.
4 But my understanding is that most of the
5 fighters for the UFC at this time were in the
6 United States; is that right?

7 THE WITNESS: No. We did a lot of
8 international shows.

9 THE COURT: When you say "a lot,"
10 Mr. Silva, you have to be very specific.

11 THE WITNESS: Right. But even if they
12 said -- if they said we're going to do one
13 show --

14 THE COURT: Let me help you. So what
15 percentage of the fights the UFC put on around
16 this time, 2011, were in the United States?

17 THE WITNESS: I don't know
18 percentage-wise, but I can --

19 THE COURT: Well, was it more than
20 half?

21 THE WITNESS: Yeah, I'd say more than
22 half. But if they told me we had one show in
23 Korea --

24 THE COURT: Well, I understand that.
25 So I appreciate what you're talking about, but

1 that's not necessarily the question I'm
2 asking. I'm trying to figure out the
3 percentages here. And there may have been --

4 THE WITNESS: Right.

5 THE COURT: -- shows here. So would
6 you say that three-fourths of the fights for
7 the UFC were in the United States?

8 THE WITNESS: Probably.

9 THE COURT: Okay. And so I'm not
10 saying you didn't have some fights, I'm trying
11 just to get some sense of the numbers.

12 THE WITNESS: Right.

13 THE COURT: And so -- because in the
14 last few slides, it looked like UFC had
15 control over most of the fighters at this time
16 in certain weight classes, and so that's why
17 when you say you had to go outside to get
18 fighters for certain international fights, I
19 want to just get a sense of how often that
20 happened.

21 THE WITNESS: Quite often, because if
22 he had told me we were going to have one show
23 in Korea, they're not only going to fight in
24 Korea, they will fight in those other shows
25 that are in the United States. I owe them

1 more than one fight when we do multi-fight
2 deals.

3 But simply knowing -- if they tell me,
4 hey, this year we're going to do a show in
5 Korea, a show in Japan, multiple shows in
6 Brazil, shows in Europe, I have to get talent
7 for all of those. And then I will have to get
8 them fights, three fights a year, average.

9 So they'll fight besides just in Korea
10 or Japan or wherever they're from. I
11 definitely have to have them for that one
12 show. But to get their other fights, they
13 will then fight in other shows that I have.

14 THE COURT: So going back to the issue
15 of them and how you would assign or pay the
16 fighters, other than these international
17 fights where you may have to find someone for
18 that local area, other than the rank and the
19 popularity of the fight, what else would you
20 look at?

21 THE WITNESS: Well, just like it
22 wouldn't have to be a country too. It could
23 be a city. If we were going to a big city and
24 they're like, do you have anybody local,
25 somebody for PR that would be good for us for

1 that city. And I'd have to try and find that
2 person and pay what it would take to get him.

3 If you had somebody -- say there's a
4 local promotion and this guy is the local
5 hero, like it would be good to pick him up for
6 this show because we're doing it in this show,
7 then we'll get local PR and sell local
8 tickets.

9 THE COURT: Right. I understand that.
10 But I'm saying it seems to me, at least from
11 what I've heard about the business, there are
12 a fair number of fighters who are known
13 nationally, that if you didn't -- because of
14 their popularity, you wouldn't have to find a
15 particular heavyweight or other fighter who is
16 just on a particular city, I'm saying in Las
17 Vegas or New York, because they were known
18 nationally.

19 And so other than the idea of
20 potentially scouting local talent, what else
21 did you look at to determine a contract for a
22 fighter?

23 THE WITNESS: Well, his level of
24 competition. So we had some -- what kind of
25 swelled the ranks, as I said, were these

1 last-second replacement fights, which we had a
2 huge number of.

3 This sport is very physically
4 demanding. So in my entire career, I've done
5 maybe one card where somebody didn't drop out
6 injured. And I've had cards where more than
7 half the scheduled fighters dropped out
8 injured. So when that happens, I still owe
9 their opponent a fight. So I would prefer to
10 take somebody who is already under contract
11 and have them step in and fight, but those
12 fighters are like, why am I going to take that
13 risk, I didn't have a full training camp to
14 prepare for this, I already have a UFC
15 contract, I'm good.

16 So I have to usually get somebody from
17 outside who is looking to get their first shot
18 with the UFC. So those type of fighters quite
19 often would be more that entry level. It's
20 like this is not really somebody I wanted to
21 sign, but I'm kind of being forced to to get
22 this other guy his fight.

23 THE COURT: So that's why it says
24 66 percent of people in that first tier were
25 --

1 THE WITNESS: I think that has a lot to
2 do with it. If you did not have the amount of
3 injuries that we have, I think those numbers
4 would be vastly different.

5 THE COURT: But then it looks like, if
6 you look at these numbers, 83 percent of these
7 fighters are in Tier 1 or Tier 2, right? Less
8 than 30,000; is that right?

9 THE WITNESS: Correct.

10 THE COURT: And is part of that due to
11 what you're talking about, which is obtaining
12 these individual fighters?

13 THE WITNESS: Yeah, I would say -- just
14 say on average if we had to sign three guys as
15 injury replacements per show, and we do 44
16 shows a year, that's a lot of fighters being
17 added.

18 THE COURT: And it looks like many of
19 them, kind of the majority of them, would come
20 in under the standard first contract, minimum
21 contract?

22 THE WITNESS: Right. As I said, they
23 are guys who I not necessarily -- like, this
24 isn't a guy I really want; it's like, this is
25 a guy I need because I owe this other guy a

1 fight.

2 THE COURT: So in order to fill sort of
3 gaps or holes in the ticket that would arise,
4 you would bring in these fighters and sign
5 them to these contracts?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. And then you're
8 not finding them any more fights after the one
9 fight you acquired them for; is that right?

10 THE WITNESS: No. I did give them a
11 standard contract. And it was my practice, I
12 knew you were coming in short notice, so it's
13 not the best circumstances, and it's a jump up
14 in competition for you. So it was very rare
15 that if you lost that fight that I would cut
16 you. I was usually going to give you another
17 opportunity.

18 THE COURT: Okay. Thank you.

19 BY MR. CRAMER:

20 Q I want to go back to your statement that
21 you -- when the UFC was putting on a show in
22 Poland, you would look for a fighter popular in
23 Poland, or if the UFC was putting on a show in
24 Buffalo, you would look for a fighter popular in
25 Buffalo.

1 I asked you whether the UFC looked to pay
2 fighters based on their popularity and their
3 performance. So the latter of three, popular in
4 Poland or Buffalo, or Poland in popularity, you're
5 looking for fighters who can generate interest with
6 the audience, correct?

7 A Yes.

8 Q Yes.

9 And when the UFC put on shows in Poland or
10 Buffalo, those were typically broadcast into
11 North America, correct?

12 A Well, it would depend on -- like, where on
13 the card they're at, though.

14 Q But the show itself would be broadcast --
15 the main part of the show would be broadcast into
16 North America?

17 A The main part, yes.

18 Q Or be on Pay-Per-View?

19 A Yes.

20 Q Or both?

21 A Correct.

22 Q Okay. All right. Let me take you to
23 Exhibit PCCX-391, it's a series of e-mails between
24 you and Bas Boon between May 19, 2009, and
25 January 29, 2011.

1 Before I ask you about the document in
2 particular, Boon is a fighter representative; is
3 that right?

4 A Yes, sir.

5 Q And in this series of e-mails, Boon was
6 trying to get you to sign one of his fighters to
7 the UFC, John Einemo; is that right?

8 A Einemo.

9 Q Einemo, E-I-N-E-M-O. Is that right?

10 A Yes, sir.

11 Q Okay. So turn to page 3 of this document,
12 please.

13 THE COURT: Now, have all of these
14 exhibits been admitted? I want to make sure,
15 because I know one of the things we have to
16 make sure we do is confirm what's on the
17 record as to whether it's been admitted or
18 whether it needs to be admitted into the
19 record here, Mr. Cramer.

20 MR. CRAMER: Well, these have all been
21 submitted. This is PCCX-391.

22 THE COURT: Okay. And have I actually
23 formally admitted all of those documents? I'm
24 not sure that I have. We can make sure that
25 we do that at the close of the proceeding

1 today.

2 MR. CRAMER: Okay. Very good. Thank
3 you, Your Honor.

4 THE COURT: For both sides' documents,
5 so whatever was offered previously.

6 Go ahead, Mr. Cramer.

7 MR. CRAMER: Thank you, Your Honor.

8 BY MR. CRAMER:

9 Q On page 3, there's this e-mail dated May 19,
10 2009, where you discuss a potential offer to
11 Einemo, and it was a four-fight contract, and you
12 offered compensation starting at 15 and 15, and you
13 proposed to increase that 2 and 2 for each win; is
14 that right?

15 A Yes.

16 Q And it was a four-fight deal; is that right?

17 A Yes.

18 Q All right. Now let's go to page 2. At the
19 bottom -- yeah, it carries over to page 3. Also on
20 May 19, 2009, Boon sends you an e-mail in which he
21 tries to negotiate higher compensation.

22 And towards the bottom of page 2, you
23 responded to Boon's efforts to get more money for
24 his client, writing, quote -- where is the bottom
25 of page 2? On the top of page 2. I'm sorry.

1 There you go.

2 Top of page 2, Wednesday, May 20th, 2009,
3 you responded to Boon's efforts to get his client
4 more money. You say: "As I said, I have a pay
5 structure. I cannot mess it up for one fighter. I
6 have to justify that to all the other managers."

7 You wrote that, correct?

8 A Correct.

9 Q All right. You can put that document aside.

10 And I'd like to show you another document
11 with a similar theme. It's PCCX-338, and it's an
12 e-mail dated October 10, 2007, in which you were
13 writing to someone named Ali Almeida --

14 A Almeida.

15 Q -- Almeida, A-L-M-E-I-D-A, regarding a
16 fighter named Ricardo Almeida.

17 And on page 2 you write -- page 2. And in
18 the box there on October 10th you write to
19 Mr. Almeida: "As I said, I have 200 fighters under
20 contract, and our purses are public. I have to
21 justify to all my other fighters what I pay out.
22 There are people under contract to me now that are
23 not making as much as I offered Ricardo, and they
24 are better known to our fans and have more UFC
25 fights than he does."

1 Do you recall writing that?

2 A Yes.

3 Q Okay. So one of the tools you used to
4 negotiate with fighters was to try and place your
5 offer that you're giving to the fighter in the
6 context of what you believed were comparable
7 fighters or even better fighters getting a similar
8 or lesser deal; is that right?

9 A Well, as it says here, I'm offering Ricardo
10 more money than people who are now in the UFC,
11 so --

12 Q Right. So you're trying to justify the
13 pay --

14 A Correct.

15 Q -- to this fighter by saying, hey, there are
16 some other people who may even be better than you
17 that are getting less?

18 A Correct.

19 Q So you're trying to convince the fighter
20 that you're treating him fairly; is that right?

21 A Yes. Whenever I've dealt with fighters, I
22 have tried to be able to justify my offer.

23 Q And one of the tools you used to negotiate
24 with fighters was to place the offer in the context
25 of these fighters, and you did that to try to,

1 again, align the pay with expected performance and
2 popularity of the fighter, correct?

3 A Well, the potential.

4 Q Right. Expected performance. Their
5 potential popularity --

6 A Unexpected is the possibility, because quite
7 a few do not.

8 Q Right. You don't know.

9 A (Nods head up and down.)

10 Q But what you're trying to do is align the
11 pay of what you expect their performance and
12 popularity to be?

13 A Well, then I could -- when somebody else
14 came to me and said, why did you give this to this
15 guy, then I could verbalize, here are part of the
16 reasons why, we're in Brazil and he's Brazilian,
17 he's got this following, he's a Brazilian Jiu-Jitsu
18 world champion, and that's something that factored
19 into it. So I'd have to list all of the reasons
20 why so that the dealers know you're just pulling
21 numbers out arbitrarily.

22 Q Right. You're trying to justify the pay
23 based on objective facts, correct?

24 A Correct.

25 Q Correct?

1 A Correct.

2 Q All right. Now I'd like to turn to a
3 document PCCX-255, and it's a series of e-mails
4 between you and Sven Bean regarding a fighter known
5 as Bang, B-A-N-G. And the top e-mail here is dated
6 December 9, 2010.

7 Do you recall this series of e-mails?

8 A Yes, sir.

9 Q Does Bang refer to Duane "Bang" Ludwig?

10 A Yes.

11 Q Okay. And I'd like to show you the first
12 e-mail in the chain on page 3.

13 A Yes.

14 Q It's from you to Mr. Bean, who is
15 representing Mr. Bang, or Bang, and you offer him a
16 new four-fight deal before Bang's last fight in his
17 prior contract.

18 And you say: "He is on his last fight at 14
19 and 14. I'll drop that and give him a new deal at
20 16, 16; 18, 18; 20, 20; and 22, 22."

21 Do you see that?

22 A Yes.

23 Q Okay. And that was the offer, correct?

24 A Yes.

25 Q And turn to Mr. Bean's response in the

1 middle of page 2. On December 8th, he asked for
2 2,000 more to win and show. Okay.

3 "Can I please ask that if we go ahead and
4 sign four more fights, we'd be able to start at 18,
5 18?"

6 So he wants a little bit more than you
7 offered.

8 And I'd like to show you your response,
9 which is on the top of page 2.

10 You tell him: "Everybody has it tough. I
11 have to do what is fair for everyone. You make
12 what you make based on performance and popularity."

13 Do you see that?

14 A Yes.

15 Q And those were your words, correct?

16 A Correct.

17 Q And by "performance and popularity," you
18 meant what we've been just talking about, that
19 fighters are paid on your view and the UFC's view
20 as to the expected fan interest and the fighter's
21 expected performance when they fight, correct?

22 A Right. Because the manager is trying to
23 make an appeal to personal issues that he's having,
24 and I'm letting him know I can't take personal
25 issues into account, I'm basing it on your

1 performance and your popularity.

2 Q Right. And in other words, if a fighter is
3 expected by you or the UFC to generate more fan
4 interest, you are willing to pay him more relative
5 to a fighter that you believe is expected to
6 generate less fan interest, correct?

7 A Correct.

8 Q Turn to page 1. And this is your last
9 e-mail to Mr. Bean, at the top of the document.
10 And you're pretty firm here.

11 You say to him: "I'm not trying to be a
12 dick, but no, everyone knows what everyone makes.
13 Our purses are public. I have to justify
14 everyone's pay to everyone else."

15 Do you see that?

16 A Yes.

17 Q And you said that, right?

18 A Correct.

19 Q And I'd like to show you -- I asked you
20 about this at your deposition, and I'd like to show
21 you your testimony about it at your deposition.

22 A Yes.

23 Q This is at 372 to 373 of your deposition.

24 I asked you: "And so you wanted to make
25 sure that you did your best to try to make sure

1 that comparable fighters with comparable" --

2 THE COURT: So, Mr. Cramer, you don't
3 need to read the deposition. If you want to
4 ask him the question, then you can ask him the
5 question. If he doesn't answer it the way he
6 answered in the deposition, then you can just
7 then read in the deposition.

8 MR. CRAMER: Okay. Fine. I'm going to
9 ask the same question.

10 BY MR. CRAMER:

11 Q So with this back and forth that we just
12 looked at, you wanted to make sure that you did
13 your best to make sure that comparable fighters
14 with comparable records are getting paid comparable
15 amounts; is that fair?

16 A Right, but it's not just on records.

17 THE COURT: Okay. But you wanted to
18 have a -- Mr. Silva, you wanted to have a
19 comparable pay scale for fighters. You
20 wouldn't just have arbitrary numbers, right?

21 THE WITNESS: Correct. That I would
22 have different factors that I could verbalize
23 and say, yes, this is why.

24 THE COURT: Right. You want to be able
25 to explain it. But those factors would be

1 applied equally across the fighters. So in
2 other words, you would look at the popularity
3 and performance of the fighters the same; you
4 wouldn't favor one fighter or another in terms
5 of that evaluation, correct?

6 THE WITNESS: Correct. But instead, it
7 would just weigh differently for different
8 fighters.

9 THE COURT: Right.

10 THE WITNESS: That problem does not
11 apply to everyone.

12 THE COURT: No, I understand that.
13 What I'm saying is that in terms of that
14 assessment --

15 THE WITNESS: Yes.

16 THE COURT: -- on performance and
17 popularity, you would try to apply that evenly
18 across the fighters, right?

19 THE WITNESS: Yes.

20 THE COURT: Right?

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 BY MR. CRAMER:

24 Q And I asked you on page 373, and I'll ask it
25 to you right now in the context of this back and

1 forth: "You attempted, at least in your mind, to
2 be fair, to impose a sense of equity between the
3 different fighters, correct?"

4 Is that right? That's what you were trying
5 to do, be fair to the fighters?

6 A Could you define "equity" for me?

7 Q Treating fighters based on the objective
8 factors that you were talking about.

9 THE COURT: I think, Mr. Cramer, he
10 just answered that question. That was the
11 question, I think, that I asked him.

12 MR. CRAMER: Okay. Thank you.

13 BY MR. CRAMER:

14 Q Let me just clarify. One way you conveyed
15 to managers and fighters that you were negotiating
16 with that you were dealing with them fairly was to
17 tell them honestly where their compensation fit
18 relative to other fighters at their level; is that
19 right?

20 A Yes.

21 Q Okay. And do you recall telling me that
22 fighters or their managers wanted to be treated
23 unfairly in their favor?

24 A Yes. I mean, a manager is doing his job;
25 he's doing everything in his power to get the most

1 that he can for his client.

2 Q Right. And the way you dealt with a manager
3 in that situation was to try to compare his or her
4 fighter to other fighters that you believed were
5 similar or better, and explain that the fighter
6 with whom you were negotiating is being treated the
7 same or better as compared to the other fighter; is
8 that fair?

9 A That's fair.

10 Q And you believed that if you were to raise a
11 fighter's pay above what a comparable or better
12 fighter was being paid, either by accident or in
13 response to a manager's inquiry, that could
14 potentially cause you problems across the board
15 with other fighters and managers; is that right?

16 A Correct.

17 Q Thank you.

18 And you told me at your deposition you
19 wanted to be able to tell fighters that they were
20 being treated fairly relative to other fighters
21 with similar skills and records and popularity,
22 correct?

23 A Right. And there's other factors too. As
24 long as I could explain it, one thing is that you
25 have certain fighters who -- as I said, people are

1 very hesitant to take last-notice fights because
2 it's a big risk, you haven't had a full training
3 camp to prepare, but there are some fighters who
4 have repeatedly done that. So their manager might
5 come back and remind me -- because you're dealing
6 with so many fighters, you might forget. So I go,
7 hey, here is a new deal, I'll offer it. And the
8 manager, if he's a good manager, he'll come to you
9 and go, you know, this guy stepped up for you,
10 three times he fought for you short notice, maybe
11 he didn't win every time, but he's always been
12 there for you. Don't you think that's worth more
13 money?

14 And I'd look at him and go, yeah, you're
15 right, he did, he did me a solid, let's give him
16 more money. But if somebody then asks about that,
17 then they go, wait, you're saying, you know,
18 because I won this many fights, I'm getting this,
19 why does that guy get that? And I can then say,
20 this guy stepped up three times late notice; he had
21 a reason outside of why I would pay him more than
22 somebody else with a similar record or a similar
23 popularity.

24 Q Fair enough. All right. Let me change
25 topics a little bit.

1 In order to fight within the UFC, Zuffa
2 requires fighters to sign what Zuffa called the
3 exclusive for both Promotional and Ancillary Rights
4 Agreement, correct?

5 A Correct.

6 Q Okay. And at the time of your deposition,
7 you were not aware of any fighter that Zuffa had
8 allowed to compete in the UFC without signing one
9 of those exclusive contracts; is that right?

10 A Correct.

11 Q And you're not aware of any fighter fighting
12 in the UFC today that did not sign one of UFC's
13 exclusive contracts?

14 A I'm not aware.

15 Q Okay. And it's fair to say that in your
16 negotiations with fighters, you understood that
17 this exclusive fighter agreement had certain
18 standard provisions that Zuffa expected its
19 fighters to sign and agree to, correct?

20 A Correct.

21 Q And it's fair to say that the end of a term
22 of a standard UFC fighter's contract, the contract
23 typically provided a 90-day exclusive negotiation
24 period; is that right?

25 A Correct.

1 Q And during that period, Zuffa was the only
2 promotion that could bid on the services of that
3 fighter, correct?

4 A Correct.

5 Q Okay. And following the exclusive
6 negotiation period, Zuffa's standard contracts
7 typically also had a right to match any offer that
8 the fighter got from another promoter, correct?

9 A Correct.

10 Q And that right-to-match period typically
11 lasted for one year; is that correct?

12 A Correct. But we would have to -- if
13 somebody had an offer, we would have to deal with
14 it immediately.

15 Q Right. So if somebody got an offer, you
16 would have to deal with it, and you decided whether
17 to respond. But if Zuffa did respond, then the
18 negotiation was over, correct?

19 A Correct.

20 Q Okay. Between the 90-day exclusive
21 negotiation period and the one-year right-to-match
22 period, Zuffa had the ability to retain any fighter
23 it wanted to keep after the term of the exclusive
24 agreement for up to 15 months, provided Zuffa was
25 willing to match an offer from another promotion,

1 correct?

2 A If it was an offer, we had to match it
3 before the end.

4 Q Right. But whenever that offer came in, if
5 Zuffa matched it, that fighter was obliged to re-up
6 with Zuffa, correct?

7 A Correct.

8 Q So for that 15 months, if there was a
9 fighter that Zuffa wanted to keep, Zuffa could keep
10 them as long as it matched the offer, correct?

11 A Correct.

12 Q And what that means is if there was a
13 fighter at Zuffa who fought out his or her four
14 fights their entire defined term, and did not want
15 to fight for Zuffa anymore, they would have to wait
16 at least the 90-day exclusive negotiation period
17 and the one-year right to match; is that fair?

18 A Except it's fairly easy to get out of it
19 because all you had to do was put something in
20 their offer that we wouldn't match.

21 Q Okay.

22 THE COURT: And about how often did
23 that happen?

24 THE WITNESS: It happened that if you
25 were --

1 THE COURT: Mr. Silva, so part of the
2 thing is you had lots of fights. Right? And
3 I have already seen information about the
4 number of fighters that Zuffa had under
5 contract. So when you say "often," it's
6 helpful for me if you can tell will me how
7 often.

8 THE WITNESS: Sure. Well --

9 THE COURT: So in terms of the
10 percentage of fighters that you wanted to
11 actually be able to keep, what percentage of
12 fighters that you wanted to be able to keep
13 did you actually lose because you were not
14 willing to match the offer?

15 THE WITNESS: Some definitely I can
16 just list off the top of my head.

17 THE COURT: Okay. So what percentage
18 of fighters --

19 THE WITNESS: I don't know a
20 percentage. Out of all of the hundreds of
21 deals that I've done that --

22 THE COURT: Mr. Silva, again -- did you
23 lose 50 percent of the fighters or --

24 THE WITNESS: No.

25 THE COURT: Okay. Did you lose

1 30 percent of the fighters?

2 THE WITNESS: No.

3 THE COURT: Did you lose 10 percent?

4 THE WITNESS: I would think probably
5 10.

6 THE COURT: Or less?

7 THE WITNESS: I don't know exactly,
8 but --

9 THE COURT: But around that period?

10 Again, I understand, Mr. Silva, you're
11 trying to be accurate. And it's hard for me
12 because, as you know, there are thousands of
13 fighters over the course of many years and
14 many fights.

15 I'm trying to just get a sense when you
16 say it happened frequently, how often that is.
17 So me trying to pin you down is just to try to
18 get some general sense of the numbers.

19 THE WITNESS: I understand that. It's
20 in relation, as I say, to the amount of people
21 who took it that far.

22 THE COURT: Right.

23 THE WITNESS: Not just the fighters in
24 general.

25 THE COURT: Right.

1 THE WITNESS: But the fighters that,
2 okay, it came down to, now we're at that
3 right-to-match stage.

4 THE COURT: Right.

5 THE WITNESS: Which didn't happen that
6 often, but that's a much smaller number.

7 THE COURT: And it didn't happen often
8 because you were usually renewing contracts?

9 THE WITNESS: Correct.

10 THE COURT: Okay. So other fighters
11 who were under UFC's umbrella, most of them
12 were renewing, most of them weren't even in
13 the situation as you described where they were
14 in a situation where you had to decide whether
15 not to match; is that right?

16 THE WITNESS: Correct.

17 THE COURT: Okay. But if you did
18 decide you wanted to match, about 90 percent
19 of the time you're able to do that; is that
20 right?

21 THE WITNESS: Correct.

22 THE COURT: Okay. Perfect. That helps
23 me. Thank you.

24 BY MR. CRAMER:

25 Q On this topic, I just want to put up

1 a document that was from The Rein Group due
2 diligence, and the formal response was by Zuffa's
3 executives. And Zuffa's executives was talking
4 about the retention rate of athletes.

5 And it says: Management doesn't have an
6 analysis about retention rates of athletes.
7 Reminder, no athlete has left the UFC that the
8 company wanted to retain.

9 Had you ever --

10 MS. GRIGSBY: Can I --

11 THE COURT: Mr. Cramer, so what I want
12 to do is -- don't -- I mean, if you want to
13 ask him about a question -- because I
14 anticipate Ms. Grigsby is going to object to
15 foundation over this witness. Just ask him
16 the question.

17 MR. CRAMER: Okay.

18 THE COURT: What you shouldn't do is
19 show him these documents as a way to try to
20 somehow get him to comment on them. Ask him a
21 question first, and if he has seen it or not,
22 then you can ask him about it. As far as I
23 know, he didn't have anything to do with this
24 document, doesn't know anything about this
25 document. So first we should take it down.

1 MR. CRAMER: Take it down.

2 THE COURT: And then -- we can ask him
3 about it. I mean, if you show it to him, you
4 want him to remember. So let's do it that
5 way. Go ahead.

6 BY MR. CRAMER:

7 Q Did you ever hear Dana White or any
8 executive at the UFC say publicly or privately that
9 the UFC had never lost a fighter if it wanted to
10 retain them?

11 A I don't think that's correct.

12 Q Had Dana said that publicly though, say,
13 except for one fighter, Henderson or Emelianenko?

14 A Well, we never had him. It's not that we
15 lost him, we never acquired Emelianenko.

16 Q Okay. So you never acquired Emelianenko.

17 But you know that Dana White has said
18 publicly that he's never lost a fighter that he
19 wanted to retain within the UFC?

20 A Right. I think that's putting a spin on it.
21 It's always to what level do you want them. If we
22 made an offer to a fighter and they reject that
23 offer, I would say we wanted them, we just didn't
24 want them at any cost.

25 Q Okay. But you heard people within Zuffa say

1 that, correct?

2 A I've heard a lot of things said.

3 Q Is the answer yes?

4 A Have I heard him say that? I believe so.

5 Q All right. All right.

6 THE COURT: We're running out a little
7 bit on your time here.

8 MR. CRAMER: Okay. I'm going to ask
9 one more set of questions.

10 THE COURT: One question I have,
11 Mr. Silva. You said that it's common for
12 fighters to get injured --

13 THE WITNESS: Yes, sir.

14 THE COURT: -- because it's a fairly
15 rough sport; is that right?

16 THE WITNESS: Yes.

17 THE COURT: So in your experience,
18 would it be common for fighters to have
19 multiple injuries over the course of their
20 career?

21 THE WITNESS: Yes. Even people who did
22 fight were usually injured. Because of the
23 nature of the sport, it's just the severity.
24 It's like, I'm bruised up, but I'm okay, I can
25 fight. So it's to what degree are they

1 injured.

2 If you're just a boxer -- boxers get
3 injured. But these guys are trained in
4 boxing, wrestling, Jiu-Jitsu, Muay Thai. So
5 this is just more ways for them to get
6 injured.

7 THE COURT: And what would be, in your
8 view, the standard minimum time you have to
9 give them to rest between fights if they
10 didn't suffer a major injury?

11 THE WITNESS: It really depends on the
12 fighters. A lot of it is who is winners in
13 the genetic lottery. There's guys who were
14 incredibly durable. Cowboy Cerrone, he can
15 fight seven times a year, no problem. Where
16 other fighters had a hard time making it to
17 two fights a year. Some people just seem more
18 durable. Some people train smarter than
19 others.

20 THE COURT: Right.

21 THE WITNESS: For MMA, one of the hard
22 things is in the gym, it's more seen as a team
23 sport than like in boxing where it's very much
24 a solo sport. Oscar De La Hoya would have
25 never sparred with Evander Holyfield just

1 because they're the same camp; he's way too
2 big. But in MMA, smaller guys go with bigger
3 guys all the time. They want to have the ego,
4 well, I'm not afraid to go with that bigger
5 guy, and that's very hard on the body to do,
6 so...

7 THE COURT: And so on average, what
8 would you say would be sort of rest time that
9 you, as a matchmaker, would want to afford a
10 boxer?

11 I know that there are some boxers who
12 are outliers who could fight more often. But
13 it sounds to me like what you're saying is
14 that they at least needed some time to rest
15 even if they didn't have a major injury.
16 Would that be six months? Seven months?

17 THE WITNESS: No, that's a long time.
18 That's why if there -- if somebody stated to
19 us that they were injured, we would send them
20 an open-ended injury extension, because we
21 don't know how long.

22 THE COURT: Right.

23 THE WITNESS: It could be real quick.
24 He can go, you know what, I feel a lot better
25 than I thought, I'm ready to go. So then we

1 would adjust the time. Or it could take
2 longer than they initially thought.

3 And with medical science improving as
4 it is, there are -- injuries that were -- like
5 in the NFL were considered career ending, that
6 we had guys come back from six months later.

7 So you just always had to listen to the
8 athlete and kind of weigh it and have them
9 tell you, hey, here's how I'm feeling, and
10 when I'll be ready to go.

11 THE COURT: Okay. Perfect. Thank you.

12 BY MR. CRAMER:

13 Q You just referred to an injury extension.
14 That is a reference to a portion in a fighter
15 contract that allows the UFC to extend the term of
16 the contract for the length of the injury; is that
17 right?

18 A Correct.

19 Q And you just said you would -- when a
20 fighter was injured and the injury was
21 indeterminate, that the UFC would send an extension
22 letter to the fighter that was also indeterminate;
23 is that right?

24 A Correct.

25 Q And that would extend the term of the

1 contract until the fighter was ready to fight
2 again?

3 A Correct.

4 Q And the contract, the term didn't start up
5 again until the fighter actually fought the next
6 fight; is that right?

7 A Correct.

8 THE COURT: So it's sort of suspending
9 the contract, while they're still under
10 contract, extending the term of their contract
11 until the fighter said to you, hey, Mr. Silva,
12 I'm ready to go back in; is that right?

13 THE WITNESS: Correct. Because we
14 promised to give them a certain amount of
15 fights within a certain amount of time, but if
16 they're sitting out unable to fight, we need
17 more time added to be able to honor the
18 contract.

19 BY MR. CRAMER:

20 Q Right. And the contract didn't start
21 again -- didn't start when the fighter said, I'm
22 ready, it started when the fighter fought again,
23 correct?

24 A Correct. Because he still might not even
25 show up for that fight, which has happened.

1 Q And during the --

2 THE COURT: I'm sorry. So after they
3 say, I'm ready to fight again, it turns out
4 that they sign up for a fight and they don't
5 show up or they let you know on short notice
6 they can't fight?

7 THE WITNESS: Correct. For a lot of
8 them, they want to get back in there and earn
9 money, so they might push themselves a little
10 too soon. So we've had people like, yep, I'm
11 ready to go, I set them up a fight, and
12 they're like, you know what, I'm just -- I'm
13 not ready, I'm still injured, I'm not going to
14 be able to make it, and you've got to pull
15 them off again.

16 THE COURT: Okay.

17 BY MR. CRAMER:

18 Q And fighters are in this position in part
19 because you're only paying them -- the UFC is only
20 paying them when they fight, right?

21 MS. GRIGSBY: Objection. I'm sorry,
22 I --

23 THE COURT: It's sustained. Mr.
24 Cramer, I think he already testified to that.
25 It's been asked and answered.

1 MR. CRAMER: Fair enough.

2 BY MR. CRAMER:

3 Q All right. I want to put up a one-page
4 document, it's Exhibit PCCX-104, it contains two
5 e-mails dated May 5th, 2015, the subject line is
6 "Pat."

7 And in the first e-mail, there's a
8 Mr. Parsons writing to Mr. Silva. I'd like to draw
9 your attention to the second e-mail at the top,
10 which is from you, responding to Mr. Parsons.

11 In that e-mail at the top, you wrote: "It's
12 just a four-fight deal, and I always renegotiate
13 before the last fight, just like I am doing now.
14 So three fights and we talk again."

15 Do you see that?

16 A Yes.

17 Q And that was your typical practice of
18 negotiating after the third fight; is that right?

19 A Yes.

20 Q And to get a new fighter to sign after the
21 third fight of the existing deal, you typically
22 offer to pay that fighter a higher amount for what
23 would have been their fourth fight in the existing
24 deal, right?

25 A Correct.

1 Q And through the new deal you're offering,
2 the fourth fight would then be the first fight on
3 the next deal; is that right?

4 A Yes.

5 Q Right. And in return for the higher pay on
6 the next fight, the fighter would then be obligated
7 for three or more fights with Zuffa, correct?

8 A Correct.

9 Q And during this period between the third and
10 the fourth fights, the fighter is still under
11 exclusive contract with Zuffa, right?

12 A Yes.

13 Q And cannot negotiate with anyone else,
14 correct?

15 A Correct.

16 Q And you told me at your deposition that the
17 majority of fighters re-upped under a new deal when
18 you made this offer before the fourth fight. Does
19 that sound right?

20 A Correct.

21 THE COURT: All right, Mr. Cramer.

22 MR. CRAMER: All right. That's all of
23 the questions I have. Thank you.

24 THE COURT: Mr. Silva, how are you
25 doing? Do you want to take a break? Or are

1 you fine?

2 THE WITNESS: If I could use the
3 restroom, that would be great.

4 THE COURT: Sure. We'll take a
5 five-minute recess and come back.

6 MR. CRAMER: Thank you, Your Honor.

7 (Recess taken at 10:46 a.m.,
8 proceedings resumed at 10:54 a.m.)

9 THE COURT: Ms. Grigsby, go head.

10 - - -

11 C R O S S

12 E X A M I N A T I O N

13 BY MS. GRIGSBY:

14 Q So I don't want to take too long, but I
15 wanted to go over some of the things that you
16 touched upon during your direct examination with
17 Mr. Cramer. So first let's just talk a little bit
18 about how athletes were compensated.

19 So on direct, Mr. Cramer asked you about the
20 10 and 10, what that means, meaning win, 10 to win,
21 10,000 to win, and 10,000 to show.

22 Was that the only amount an athlete could be
23 paid under his or her contract with the UFC?

24 A No. We had -- there was also different
25 bonuses and different ways of getting paid.

1 Q And so if we could just please pull up
2 ZCCX-214.

3 THE COURT: Hold on just a moment.

4 Go ahead, Ms. Grigsby.

5 BY MS. GRIGSBY:

6 Q So this is a document entitled Forms of UFC
7 Compensation. Have you seen this document before?

8 A I have.

9 Q And does this document accurately reflect
10 the types of compensation that the UFC provided to
11 athletes?

12 A It does.

13 Q So, for example, you mentioned there were
14 other forms. Can you just briefly go through what
15 the other forms of compensation might be that an
16 athlete who receives 10 and 10 might receive?

17 A Well, there has been discretionary bonuses.
18 There has been of-the-night bonuses we offer every
19 show that we do, you would have a fight of the
20 night, which both fighters would get \$50,000 each
21 for participating, the winner and the loser. We
22 also have two performance bonuses, again a great
23 knockout or great submission, there would be an
24 additional \$50,000 for each of those bonuses.

25 THE COURT: And were those standard

1 bonuses for fighters? In other words, it
2 wouldn't be one fighter get \$30,000 for that
3 same fight versus another fighter get \$50,000,
4 right?

5 THE WITNESS: It could be the first
6 fight of the night or the main event. It
7 would be the same.

8 THE COURT: But I mean in terms of for
9 the different fighters, fighters themselves,
10 you wouldn't have different bonus amounts --

11 THE WITNESS: No.

12 THE COURT: -- for different fighters
13 for those types of bonuses, right?

14 THE WITNESS: It was the same for
15 everyone.

16 THE COURT: Okay. And were fighters
17 allowed to negotiate the bonuses, those types
18 of bonuses?

19 THE WITNESS: No. There was a -- it
20 did evolve. There was a time where a bonus
21 amount was different from show to show based
22 on how big the show was. But that caused a
23 problem, which I solved, where it was just
24 like, well, your people, maybe they're not the
25 highest ranked guy, but they're very exciting,

1 and they get bonuses, and he doesn't want to
2 go out and fight on this small show, because
3 lesser bonuses, and he's a bonus machine. So
4 to avoid people wanting to skip shows because
5 the bonuses are different, it's like let's
6 just make them all standard for all the shows.

7 THE COURT: And about when did you do
8 that?

9 THE WITNESS: I'm so bad with time
10 frames.

11 THE COURT: Before or after
12 Strikeforce?

13 THE WITNESS: Probably after, that it
14 became more uniform.

15 THE COURT: Right after that?

16 THE WITNESS: Not right after, but --

17 THE COURT: But around that --

18 THE WITNESS: I think it came about
19 simply because we were starting to notice that
20 this trend was happening with certain fighters
21 avoiding certain shows.

22 THE COURT: I see.

23 THE WITNESS: And it was based on the
24 bonuses. Like Joe Lauzon, he never fought for
25 a title, he was always an exciting guy, you

1 could have him on an exciting fight. But
2 there would be certain shows, like, hey, Joe,
3 I want you on the show, he's like, yeah, I'd
4 rather wait for the Pay-Per-View. I was
5 like -- you know, at first you're like, but
6 why, this is a good spot for you and it shows
7 you off. He's like, hey, man, I'm all about
8 the bonuses, you have that -- you're only
9 offering \$30,000 for a show this size, and I'd
10 rather wait to Pay-Per-View where it's
11 \$60,000.

12 THE COURT: Because the bonus for the
13 one event could be substantially higher, it
14 could in fact be more than they might get paid
15 for their -- whatever the win amount is,
16 right?

17 THE WITNESS: Correct. And multiple
18 times it even happened where you got two
19 bonuses, the person got the fight of the
20 night, so they got 50,000 for that, and they
21 got performance of the night because it was
22 the best fight and they had a spectacular
23 knockout in it, so they got an extra \$100,000
24 for that fight.

25 THE COURT: Okay. Thank you for

1 explaining that.

2 BY MS. GRIGSBY:

3 Q But just to touch upon it, there's more in
4 this spreadsheet than just bonuses; is that right?

5 A Correct.

6 Q So did some fighters negotiate, say, for
7 example, signing bonuses?

8 A Yes.

9 Q Did UFC have different negotiations
10 regarding incidentals for fighters?

11 A Yes, for some.

12 Q Can you just give an example of what the
13 difference might be in those negotiations?

14 A Well, standard, we would fly the fighter and
15 the cornerman to the show, they would share a
16 hotel, they would both get per diem. And there
17 would be certain fighters when they achieved a
18 higher stature, that they're like, look, I really
19 need two cornermen, and they need their own hotel
20 room.

21 You did have to be pickier about that simply
22 because we were only allotted so many hotel rooms
23 by the casino, but there would be some where there
24 would be some wiggle room for that.

25 Q And you also mentioned Pay-Per-View, that

1 some athletes negotiated shares of Pay-Per-View
2 revenues; is that correct?

3 A Correct. Some fighters would get a piece of
4 the Pay-Per-View.

5 Q So can you describe generally how did that
6 work to negotiate a piece of the Pay-Per-View?

7 A So if you've got -- if a fighter is to the
8 stature of where that was a possibility, generally
9 I would refer them to Dana or Lorenzo. But if they
10 granted them that, say they were the champion, when
11 they defended their title, they would get a
12 percentage of Pay-Per-View over a certain base
13 level.

14 Q And when you negotiated Pay-Per-Views, did
15 athletes ever ask you about Zuffa's actual or
16 expected revenue for an event?

17 A No.

18 Q All right. So then I just want to go back
19 to -- you mentioned that there was a minimum pay.
20 And plaintiff showed you JCCX-8. Do you recall
21 that?

22 A Yes.

23 Q Now, did you create that slide dec, JCCX-8?

24 A I did not.

25 Q And do you know --

1 THE COURT: So Ms. Grigsby --

2 MS. GRIGSBY: Sure.

3 THE COURT: -- just so we're clear, do
4 you mind putting that up on the screen?

5 MS. GRIGSBY: Oh, sure. I'm sorry.
6 Would you put up --

7 THE COURT: Is that the Moving the
8 Minimums?

9 MS. GRIGSBY: Correct. Yeah.

10 THE COURT: Okay. I just wanted to
11 make sure you're referencing and I'm
12 referencing --

13 MS. GRIGSBY: Yes.

14 THE WITNESS: -- we're talking about
15 the same --

16 MS. GRIGSBY: Yes.

17 THE COURT: So it's Moving the Minimums
18 sheet that had the different scales as well as
19 that tier column. Is that the one you're
20 talking about?

21 MS. GRIGSBY: Correct.

22 THE COURT: And, Mr. Silva, that's what
23 you understand to be the document?

24 THE WITNESS: Yes.

25 THE COURT: That's fine. We don't need

1 to show it now. I just wanted to -- you to
2 identify it for the record.

3 BY MS. GRIGSBY:

4 Q So for JCCX-8, did you create any of these
5 slides?

6 A No.

7 Q And do you know -- let's turn to the
8 assumptions. When it talks about greater than or
9 equal to -- for Tier 2, greater than or equal to
10 17K, less than 30K, do you know where those numbers
11 are coming from?

12 A I don't.

13 Q Okay.

14 THE COURT: And I'm sorry, who was the
15 person who prepared this document?

16 THE WITNESS: Denitza Batchvarova.

17 THE COURT: And what was her role?

18 THE WITNESS: She would do, like,
19 financial projections and stuff for Zuffa.

20 THE COURT: So she would have access to
21 all the contracts and information in the
22 contracts?

23 THE WITNESS: Correct.

24 THE COURT: Okay. So she would have
25 known this information about what all the

1 fighters were being paid, because she would
2 have access to it as a financial person inside
3 of Zuffa; is that correct?

4 THE WITNESS: But she's trying to make
5 projections on --

6 THE COURT: Okay. But first answer
7 that question. She would have had access to
8 all the fighter contracts and their amounts?

9 THE WITNESS: Yes.

10 THE COURT: Okay. So she could create
11 a chart based upon that information, correct?

12 THE WITNESS: The information we had at
13 the time, yes.

14 THE COURT: Okay. I understand you're
15 saying that you don't -- you may or may not
16 have agreed with how it was put together, but
17 she had access to that information, to include
18 all of the contracts for all of the fighters
19 for UFC at the time?

20 THE WITNESS: Yes.

21 THE COURT: Okay. Thank you.

22 Go ahead.

23 BY MS. GRIGSBY:

24 Q But do you know how she put together this
25 information? Do you actually know that she

1 consulted with all these contracts?

2 A I don't know.

3 Q Okay. So let's talk a little bit about the
4 minimum compensation, just to be clear.

5 You mentioned that untested fighters or new
6 fighters, some of them received \$10,000 as a start
7 for their first contract.

8 Would those same fighters receive a second
9 amount for their second contract with the UFC?

10 A If they --

11 Q Like a second starting point. Sorry.

12 So talking about not the first contract, but
13 the second contract.

14 A There was no set second contract.

15 Q So there was no minimum for the second
16 contract with the UFC; is that right?

17 A No.

18 Q Okay.

19 A The only minimum at that point was the 10
20 and 10 that was established.

21 Q And would you say athletes generally signing
22 their second contracts with the UFC received
23 similar amounts for show and win payments?

24 A I'm sorry, repeat that.

25 Q Would you say that athletes signing their

1 second contracts with the UFC would always receive
2 similar amounts for their show and win payments in
3 their second?

4 A No.

5 Q Why not?

6 A Because it would depend -- well, if you
7 fought three fights, it would depend on what you
8 did in those three fights. It's very different if
9 you won all three fights, if you lost all three
10 fights, if you had a mix in between, if you won
11 those fights in an exciting fashion, the level of
12 competition that you were fighting in those three
13 fights would affect your next deal.

14 Q Okay. And were there instances where
15 fighters had, say, for example, losses, who might
16 receive more on those second contracts than
17 fighters who might have had a slightly better
18 record?

19 A Yes.

20 Q Can you give some examples?

21 A Off the top of my head, I'm not sure. There
22 are so many that -- to remember, had they that
23 early on in their career, if they lost and come up.
24 But we certainly had more popular people. There's
25 examples like Sage Northcutt, who was signed to a

1 multiplied deal, and way before his deal was up
2 received a huge jump in pay simply because Dana
3 just saw a lot of potential in him.

4 Q Okay. So I want to go back to the PCCX-391,
5 which is -- can we put 391 up, please. And
6 that's -- I'll just take minute, but it's the
7 e-mail exchange between Bas Boon about John --

8 A Olav Einemo.

9 Q Einemo.

10 Now, just to be clear, plaintiffs have asked
11 you a number of questions. But when you said, "I
12 have a pay structure, I cannot mess it up for one
13 fighter," did that mean to you that Zuffa had a pay
14 structure?

15 A No, Zuffa did not have a pay structure.

16 Q Why do you say that?

17 A Well, because my opinion of what somebody
18 was worth was not the same as what Dana thought
19 they were worth or Lorenzo thought they were worth
20 or Sean thought they were worth. There's no, like,
21 written or set structure or anything.

22 Me saying "structure," I'm just talking
23 about my logical framework of how I justified; that
24 if Dana came to me and said, why are you paying
25 this guy this, that I could then go, I'm paying him

1 this because of this, this and this.

2 THE COURT: Well, you try to be
3 consistent, right, Mr. Silva?

4 THE WITNESS: Correct. I try to have a
5 consistent logic. Now, those numbers would
6 change depending on the circumstances.

7 THE COURT: Well, right. They would
8 change based upon each fighter, obviously.
9 But in terms of what you considered the early
10 stage, you looked at their performance and
11 their popularity as two of the main factors
12 you considered, you didn't change
13 consideration of those two main factors across
14 the fighters, right?

15 THE WITNESS: Right. But there are
16 also other things. Like I said, if somebody
17 had fought multiple late-notice fights. As
18 long as they had some sort of thing that I
19 could verbalize it --

20 THE COURT: Well, I understand that. I
21 understand that. What I'm saying is there
22 would be a case that -- some of the fighters
23 you would consider performance but not their
24 popularity, and for other fighters you would
25 just consider popularity. You wouldn't --

1 THE WITNESS: Well, it would weigh
2 differently. And that was a hard thing, where
3 this is more of an art than a science.

4 THE COURT: Mr. Silva, you have to try
5 to listen to my question.

6 You considered performance and
7 popularity for all of the fighters when you
8 assessed them, right?

9 THE WITNESS: Yes.

10 THE COURT: Okay. And you try to do
11 that analysis the same for the fighter; it
12 doesn't mean that it resulted in the same
13 contract, I'm not saying that meant that you
14 paid them all the same. What I'm saying is
15 that you tried to use those factors equally
16 across the fighters; you didn't try to weigh
17 them differently just based upon who the
18 fighter was.

19 And I understand that the factor itself
20 might have come out differently in terms of
21 your analysis based on the fighter's
22 performance, but it's not as if, for example,
23 some fighters you would say, I'm not even
24 going to consider their performance at all,
25 for example. You would never do that, right?

1 THE WITNESS: Correct.

2 THE COURT: Okay. That's what I'm
3 saying. I just want to get a sense of the
4 application of the fact that you tried to use
5 the same factors so you could be consistent,
6 and then you could justify, as you said, why
7 you paid, for example, different fighters
8 different amounts; is that right?

9 THE WITNESS: Correct.

10 THE COURT: Okay. All right. That's
11 helpful. Thank you. Go ahead, Ms. Grigsby.

12 BY MS. GRIGSBY:

13 Q Just to be clear, though, how many different
14 people negotiated contracts besides yourself with
15 athletes?

16 A There was me, Sean Shelby, Dana, Lorenzo.
17 Sometimes they might hand one off to one of the
18 lawyers, but generally they would, like, give them
19 the terms, they'd just kind of be in between. But
20 we were the four main people, me, Sean, Dana and
21 Lorenzo.

22 Q And when you talk about you, Sean, Dana,
23 Lorenzo, which is four people, did you always agree
24 on how much a fighter was worth or how much would
25 be offered to a fighter?

1 A No. We differed greatly oftentimes.

2 Q And did you have any -- you mentioned you
3 didn't have any guidance. But did you have any
4 framework that told you, all four of you, how much
5 you should be offering a particular fighter based
6 on performance or popularity?

7 A No.

8 Q And you mentioned there were times that you
9 disagreed; is that correct?

10 A Correct.

11 Q Did you ever receive even like an e-mail
12 that said this is the structure that we're going to
13 use going forward to negotiate with athletes to
14 determine how much to offer that athlete?

15 A No.

16 Q And if there was such a policy, would you
17 have known about it in the course of your job as
18 vice president of talent and relations?

19 A I would think so, because I was signing so
20 many contracts, I would have to know.

21 Q And when you talked about using objective
22 factors, if you didn't agree, would those factors
23 be the same for everybody who was negotiating
24 contracts?

25 A No.

1 THE COURT: Well, Mr. Silva, my
2 understanding from your earlier testimony was
3 that you negotiated most of the contracts, and
4 the high-level contracts were left to
5 Mr. White and Mr. Fertitta, but most of the
6 contracts -- most of the lower fights, I take
7 it, were left to you as one of the main people
8 doing the negotiations; is that right?

9 THE WITNESS: No. I mean, Sean Shelby
10 did probably 40 percent. Between me and Sean,
11 the ones that Dana and Lorenzo did do, we
12 probably split 60/40.

13 THE COURT: I see. So they would
14 negotiate -- Mr. White and Fertitta, they
15 would negotiate some of the top fighters; is
16 that correct?

17 THE WITNESS: Right.

18 THE COURT: In terms of the fighters
19 below that, it was then you and Mr. Shelby,
20 and you said as related to that split between
21 you and Mr. Shelby, it was about you doing
22 60 percent, Mr. Shelby about 40 percent?

23 THE WITNESS: That seems about right.

24 THE COURT: Okay.

25

1 BY MS. GRIGSBY:

2 Q And did you --

3 THE COURT: And hold on just a second,
4 Ms. Grigsby.

5 MS. GRIGSBY: Okay.

6 THE COURT: So did you and Mr. Shelby
7 have vastly different ways of evaluating
8 fighters, so if one fighter came to you with
9 essentially the same types of popularity and
10 performance, they'd get one number, and they'd
11 get a different number from Mr. Shelby?

12 THE WITNESS: It didn't happen. It
13 would go because of -- I didn't want to create
14 confusion, I'd seen how they work in other
15 promotions, so we tried to not do what I call
16 crossing the streams.

17 THE COURT: Right. But --

18 THE WITNESS: I left Sean's guys to
19 Sean. But if he gave them a deal, like, they
20 didn't like, they would try to come to me, and
21 I'd be like, no, that's not -- you're Sean's
22 guy, not my guy, I'm not dealing with that.

23 THE COURT: Well, and was Mr. Shelby,
24 as far as you know, considering other factors
25 besides performance and popularity?

1 THE WITNESS: No. But our opinion of
2 what those are, what he might find to be
3 exciting or interesting or not, but I did,
4 that would happen all the time. When we had
5 to determine the of-the-night bonuses, we'd
6 fight like cats and dogs about that.

7 THE COURT: I understand that. But
8 it's your understanding that Mr. Shelby was
9 also looking at performance and popularity
10 when he determined what to pay fighters,
11 wasn't he?

12 THE WITNESS: There's also, like,
13 potential. That's a big part of what you
14 would pay --

15 THE COURT: Mr. Silva, again, try to
16 listen to my question.

17 Did you understand that Mr. Shelby was
18 also using popularity and performance as
19 measures to determine what to pay fighters?

20 THE WITNESS: Yes, I understood the
21 question, and I'm trying to explain --

22 THE COURT: It's a yes-or-no question.

23 So did he also use those factors or did
24 he not?

25 THE WITNESS: Those are part of the

1 ones that he used, yes.

2 THE COURT: Because I want to
3 understand. It's not as if, for example, if
4 I'm saying this -- otherwise you'd have, it
5 seems to me, some sort of competition that
6 you -- one fighter could come to you and get a
7 10, 10, or a 15, 15 contract, and go to him
8 and get a 22 and 22 or whatever the number
9 would be contract?

10 THE WITNESS: He could not.

11 THE COURT: Okay. So there would be
12 some sense of at least consistency as it
13 relates to the application? It's not as if
14 you had vastly different ways in which the
15 same type of fighter would be given a
16 contract, is it?

17 THE WITNESS: They could not, because
18 we didn't deal with the same fighters.

19 THE COURT: Okay. So help me
20 understand. So in other words, you're saying
21 that once a fighter had a contract negotiated
22 with you, then typically you would be the one
23 to renegotiate that fighter's contract?

24 THE WITNESS: Yes. Sean had his weight
25 classes. He did 145, 135, 125 pound men's and

1 the women's divisions. I did not touch those
2 classes, never ever.

3 THE COURT: Right. Okay. So you had
4 your own sort of categories that you looked
5 at?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Now I get it. Okay.
8 Thank you.

9 Go ahead, Ms. Grigsby.

10 BY MS. GRIGSBY:

11 Q And you were mentioning something about
12 potential. Would you say potential is the same
13 thing as performance and popularity?

14 A No, because it's unknown. You know how
15 popular someone is. You know what they've done.
16 It's a whole different thing, you trying to guess
17 what they might do in the future. That's a whole
18 different thing. And that's where our opinions can
19 vary greatly.

20 Q Did your opinion vary from Sean, Lorenzo
21 Fertitta and Dana White about who had potential in
22 terms of athletes?

23 A Yes.

24 Q So I want to look at Plaintiffs'
25 Exhibit 365, if we could put that up.

1 And this is the e-mail from February 12th,
2 2011, and the subject is "We own MMA." Correct?

3 So I just have a few questions, which is --
4 so here it's talking about the rankings. It's for
5 USA Today, SB Nation Consensus MMA Rankings.

6 What type of ranking is that in terms of MMA
7 athletes?

8 A What they would do is they would check a
9 bunch of other websites' rankings and then try to
10 come up with -- get an average using all these
11 other rankings that were done.

12 Q When you were looking at rankings -- or when
13 you looked at rankings, did you always refer to the
14 SB Nation Consensus MMA Rankings to determine an
15 athlete's ranking?

16 A Not always.

17 Q Where else would you look?

18 A There was a bunch of different -- you know,
19 Sherdog would do rankings, or FightMetric. There
20 was a bunch of different rankings. So you kind of
21 checked them all out to see what they're doing, if
22 you agreed with them, disagreed with them.

23 Q And did rankings stay consistent, like, you
24 know, from, say, one month to the next?

25 A No.

1 Q How often would they change?

2 A They would change constantly. Even the UFC
3 rankings changed depending on who in the pool was
4 voting.

5 Q So the number of people who are ranked here,
6 would those necessarily have the same rankings in,
7 say, 6 or 12 months?

8 A No.

9 Q Just one other thing I wanted to point out.
10 So you were looking at the heavyweight rankings,
11 and it ranks them 1 through 23. And you mentioned
12 a couple of times, but who was the top Strikeforce
13 heavyweight on this consensus ranking?

14 A Fedor Emelianenko was in Strikeforce.

15 Q And did Fedor Emelianenko ever sign with the
16 UFC?

17 A He did not.

18 Q Did you try to sign Fedor?

19 A We did.

20 Q And you were never successful -- how long
21 did you try to sign Fedor?

22 A For quite a while. He was considered by
23 many to be the top heavyweight for a long time, so
24 we definitely tried to get him.

25 Q So I want to talk to you just a little bit

1 about wage share. Are you familiar with the
2 concept of paying athletes a percentage of a
3 company's revenue?

4 MR. CRAMER: Your Honor, may I object?
5 There's -- first of all, Mr. Silva never put
6 in a declaration in this case. So the only
7 thing we have in the record from Mr. Silva are
8 his documents and the deposition. There are
9 no questions in the deposition about wage
10 share. There's nothing in the documents about
11 wage share. So now we're going to have this
12 lay witness testify apparently about an
13 economic concept that seems inappropriate and
14 brand new and --

15 THE COURT: Okay. Ms. Grigsby, did he
16 ever previously testify about wage share?

17 MS. GRIGSBY: He did not, but that's
18 the point. He is going to testify --

19 THE COURT: So we're not going to allow
20 him to testify about it now.

21 MS. GRIGSBY: So I just -- really, my
22 only question there is if he's even familiar
23 with it.

24 THE COURT: Here's what I'm saying. I
25 really don't think it's fair to go down this

1 avenue if there hasn't been testimony.

2 MS. GRIGSBY: Sure.

3 THE COURT: Because what's going to
4 happen is we're going to end up -- there's
5 essentially a free-for-all for testimony as it
6 relates to things that he hasn't previously
7 testified about.

8 So I'm going to sustain the objection.
9 We'll move on.

10 BY MS. GRIGSBY:

11 Q So when you were negotiating contracts with
12 athletes, did you know Zuffa's event revenues?

13 A I did not.

14 Q Were you ever told that you had a budget for
15 negotiating with fighters?

16 A I was not.

17 Q Were you ever told that you were spending
18 too much for compensation on fighters?

19 A I was not.

20 Q Now, plaintiffs have suggested that Zuffa
21 tried to maintain a certain set of its revenues as
22 compensation --

23 MR. CRAMER: Your Honor --

24 THE COURT: You're asking the question
25 in a different way, and so I just want to warn

1 you. All right. I gave you a little latitude
2 on the first few questions. Please, if I
3 sustain an objection, don't try to ask the
4 question in a different way, because that's
5 exactly what we're doing. So I sustained it.
6 Move on from this area.

7 MS. GRIGSBY: Okay. I'll move on.

8 THE COURT: And I'm going to strike
9 from the record all of his answers as it
10 relates to revenues in this case that were
11 just asked and answered. Go ahead.

12 BY MS. GRIGSBY:

13 Q Well, just one question is: Did any athlete
14 ever ask to be paid based on revenue from an event?

15 THE COURT: Sustained.

16 BY MS. GRIGSBY:

17 Q Now, plaintiffs have asked you a little bit
18 about the right to match, Zuffa's right to match
19 athletes who brought offers. You recall that
20 testimony, correct?

21 A Correct.

22 Q And there you said that many of the
23 athletes, there was only a certain percent where
24 Zuffa chose not to match it; is that right?

25 A Correct.

1 Q Now, can you list some of the athletes that
2 Zuffa did want to retain that you were unable to
3 retain and match?

4 A I mean, just off the top of my head, guys
5 like Ryan Bader, Rory MacDonald --

6 MR. CRAMER: Your Honor, I'm going to
7 object here too. This is brand new. I've
8 actually asked him in his deposition, and he
9 said --

10 THE COURT: Overruled. I asked him
11 about this, and he gave percentages.

12 MR. CRAMER: Okay.

13 THE COURT: He can go ahead and do
14 that. Go ahead.

15 THE WITNESS: So we had fighters like
16 Rory MacDonald, Ryan Bader, Lyoto Machida,
17 Gegard Mousasi. There's a lot of fighters who
18 we made offers to keep, and they got better
19 offers and outbid us.

20 THE COURT: Okay.

21 BY MS. GRIGSBY:

22 Q And some of these fighters, where did they
23 end up competing?

24 A Those went to Bellator. But guys -- like,
25 Brandon Vera went to One FC.

1 Q And did Zuffa try to retain Brandon Vera?

2 A We made an offer to keep him. He was an
3 attractive athlete, he could fight heavyweight or
4 light heavyweight.

5 Q And so another thing that plaintiffs -- or
6 Mr. Cramer asked you about was the fact that you
7 often renegotiated contracts on the third fight.

8 So why did you renegotiate contracts on the
9 third or -- the third or the fourth -- third fight
10 of a four-fight deal?

11 A Well, I would prefer that the fighters would
12 stay in their contract so that I could immediately
13 turn them around into other shows.

14 The longer that you had negotiations outside
15 of contract, that was going to take longer before I
16 could put them in a show. I couldn't advertise a
17 fighter as being on a show if he was not actually
18 contracted to me.

19 Q And in terms of renegotiating after the
20 third fight, was it always you initiating that
21 negotiation?

22 A No. Quite often fighters would want to do a
23 new deal because they know that I would offer them
24 more money to do a new deal.

25 Q So can we pull up ZCCX-14? And I'm looking

1 at page 2 of 9.

2 So here, I'll just read it. It's to you
3 from --

4 THE COURT: Okay. Why don't you just
5 ask it, just like I told Mr. Cramer.

6 MS. GRIGSBY: Sure.

7 BY MS. GRIGSBY:

8 Q Well, here it's about Tim Means. And it
9 says at the bottom: "I'd like to talk to you about
10 a new contract for Tim Means. He's three in on his
11 current four-fight deal. Hit me back at your
12 convenience."

13 Is this an example of some -- a manager
14 trying to renegotiate before the fourth fight?

15 A Yes.

16 Q Okay. So can you look at the next page of
17 the exhibit. This is for a different fighter, and
18 I don't want to do violence to his name, but Daniel
19 Omielanczuk.

20 A Omielanczuk.

21 Q Yeah.

22 At the bottom it says -- it's from his
23 manager. And it says: "How are you doing? Daniel
24 did a job in UFC Fight Night 72. We are happy to
25 see his aggressive style and finish his night in 48

1 seconds in round one. As you may know, it is his
2 fourth fight out of his five-fight contract. Will
3 you be able to review the current contract or wait
4 for another fight? Hope he validated his value for
5 UFC, especially in Europe's region."

6 Is this another example of a manager
7 contacting you prior to the last fight for
8 negotiations?

9 A Yes.

10 THE COURT: I'm sorry. Mr. Silva,
11 managers would be for the fighters, as far as
12 they'd be paid out of the fighter's contract;
13 is that right?

14 THE WITNESS: Correct.

15 THE COURT: So you didn't have separate
16 manager contracts?

17 THE WITNESS: No, sir.

18 THE COURT: All right. Thank you.

19 Go ahead, Ms. Grigsby.

20 And Zuffa didn't have its own sort of
21 stable of managers that it assigned to
22 fighters, did it?

23 THE WITNESS: No. We were very careful
24 to make sure not to recommend managers. We
25 had one fighter's manager was his mother.

1 THE COURT: Okay. All right. Thank
2 you.

3 BY MS. GRIGSBY:

4 Q And I just want to move on to just a
5 slightly different topic.

6 When you spoke -- you've testified quite a
7 bit that there are injuries, and you also testified
8 about extensions and extending because of injuries.

9 So in plaintiffs' expert report, Dr. Singer
10 referred to JCCX-22. Can we pull that up? Maybe
11 we can't, but --

12 THE COURT: Maybe you can just ask the
13 question without it.

14 MS. GRIGSBY: Sure.

15 BY MS. GRIGSBY:

16 Q So in this e-mail Tracy Long e-mails Michael
17 Mersch, who was in the legal department, to ask him
18 what she should do when there was a request for
19 six-month extension for Mats Nilsson.

20 And Michael Mersch responds: "I guess we
21 just need some sort of basis for the six-month
22 extension. Joe is asking us to add onto his deal."

23 And then Dr. Singer, in his report --

24 THE COURT: Well, Ms. Grigsby, you're
25 testifying.

1 MS. GRIGSBY: Sorry.

2 THE COURT: So let's just ask a
3 question, please.

4 MS. GRIGSBY: Yeah.

5 BY MS. GRIGSBY:

6 Q So did you ever send an extension letter for
7 Mats Nilsson for no reason --

8 A No.

9 Q -- an injury extension letter?

10 Okay. Can we pull up ZCCX-17.

11 MR. CRAMER: Your Honor, I'm going to
12 object to this as well. He was not shown
13 these documents at his deposition. This is
14 all brand new.

15 THE COURT: Well, I just don't see how
16 it's relevant, Ms. Grigsby. I think you've
17 made the point that he to have reason for
18 extending or not. So I'm not sure why we're
19 looking at this.

20 MS. GRIGSBY: Sure, Your Honor.
21 Honestly, the point is just that. Their
22 expert actually wrote in an attachment to the
23 class certification motion that there were
24 fighters who were extended for absolutely no
25 reason. And in the exhibits that were

1 submitted for this hearing, and in the
2 exhibits the plaintiffs have, there is
3 actually documentation for --

4 THE COURT: Well, you can ask him. So
5 I'm saying you can ask him that, that's fine.
6 I'm just saying he's not the witness to get in
7 exhibits that he didn't actually create. If
8 you just want to ask him as one of the main
9 people negotiating contracts and extending
10 them, whether or not he did it for no reason,
11 that's fair.

12 MS. GRIGSBY: Well, this exhibit, he
13 actually is in the e-mail traffic, which is
14 how he knows that there was an injury
15 extension. So I am just looking at page 5 of
16 6 on ZCCX-17.

17 THE COURT: What I'm saying to you is
18 what's more relevant to me is not one
19 particular fighter's situation, but what was
20 the practice as it relates to the contract.

21 So as you know, there are thousands of
22 these contracts. So whether or not it
23 happened or not in all instances would be to
24 me a negligible probative for value compared
25 to whether or not there was, in fact, a

1 policy. So I think that's the question that's
2 more relevant.

3 MS. GRIGSBY: Understood.

4 BY MS. GRIGSBY:

5 Q So did you have a policy of extending
6 fighters' contracts without any reason or without
7 any justification?

8 A Absolutely not.

9 Q Would you ever do that? Would you ever --

10 A I would not.

11 MS. GRIGSBY: Okay. I actually have no
12 further questions. Thank you.

13 THE COURT: Thank you.

14 MR. CRAMER: Your Honor, I need one
15 minute.

16 THE COURT: Sure.

17 MR. CRAMER: All right. I'll try to be
18 quick, Your Honor.

19 THE COURT: Sure.

20 MR. CRAMER: Hello again, Mr. Silva.

21 - - -

22 R E D I R E C T

23 E X A M I N A T I O N

24 BY MR. CRAMER:

25 Q So you were asked by Ms. Grigsby about your

1 working together with Sean Shelby, and whether you
2 worked with him or not when you and he were
3 negotiating contracts. I also asked you about
4 this. But I did ask you about this at your
5 deposition, so I just wanted to show you your
6 testimony at your deposition.

7 THE COURT: Why don't you ask him the
8 question first and then if he --

9 MR. CRAMER: Well, I asked him -- he
10 did --

11 THE COURT: But then ask it again,
12 please.

13 MR. CRAMER: Sure.

14 BY MR. CRAMER:

15 Q So I asked you whether you and Sean Shelby
16 communicated regularly when you were negotiating
17 contracts with fighters. And I believe you told
18 Ms. Grigsby and me that you didn't recall doing
19 that. Is that fair?

20 A We communicated, but not directly about
21 contracts.

22 Q Okay. Would you put up the testimony --
23 this is from Mr. Silva's deposition, at 371, 11 to
24 23.

25 And so I ask: "So if there are some -- if

1 one of the three of you" -- and I think this is
2 referring to you, Shelby, and Dana White, three
3 people who are negotiating contracts -- "are kind
4 of raising the level per equivalent fighter, that's
5 going to put pressure on that third person to raise
6 as well?"

7 And you said: "I don't think it's pressure
8 in that me and Sean did the vast majority of deals,
9 and me and Sean were in constant communication
10 every day and knew what each other were doing. So
11 it's not like I was going, Sean, what are you doing
12 here? We knew. But we would still, on our own,
13 choose to, let's move people up. We felt like it's
14 time to do it. So Dana and Lorenzo did do deals,
15 but they did like maybe 10 to 15 percent of deals."

16 A Correct.

17 Q Does that refresh your recollection about
18 your working with Mr. Shelby on negotiating deals
19 with fighters?

20 A Right. But we still -- we're talking about
21 the -- we had communication every day, we always
22 talked. But he wouldn't go, I'm offering this
23 fighter a deal at that. It wasn't that kind of
24 talk. It was just general communication all the
25 time every day. We probably had the best

1 communication in the company.

2 Q Right.

3 A But it wasn't -- I did not micromanage him,
4 going, what are you doing on every individual deal
5 for every fighter.

6 Q No. No. But you weren't operating in
7 silos, you communicated a lot --

8 A Constantly.

9 Q -- about fighter contracts?

10 A Not as much about fighter contracts, because
11 it wasn't necessary.

12 Q But you knew -- you worked together, you
13 maybe didn't talk specifically about fighter
14 contracts, but you worked together in the same
15 department, doing the same thing, correct?

16 A Well, it's not the same thing because he had
17 his own classes.

18 Q Right.

19 A So I would tell him if I have -- if we have
20 a 13-fight card, and I'm going to do 8 fights on
21 this card, and you're going to do 5, I communicate
22 with him, where are your five fights? I got mine.
23 I've got to know what you have, I've got to know
24 where I'm going to place your fight. It was that
25 kind of communication every day, most of the day.

1 Q Fair enough.

2 And you, with the fighters that you were
3 negotiating with, attempted to be fair and slot the
4 fighters in in terms of your view of their
5 popularity and performance, right?

6 A Correct.

7 Q And Mr. Shelby tried to do the same, right?

8 A Correct.

9 Q And Mr. White tried to do the same with the
10 people he was negotiating with, right?

11 A Correct.

12 Q And Mr. Fertitta, to the extent he was
13 involved at all, he also tried to be fair, correct?

14 A Correct.

15 Q All right. Let's talk about --

16 THE COURT: Excuse me just for a
17 second.

18 So, Mr. Silva, are you saying there was
19 no communication with each other about what
20 would be appropriate levels of compensation to
21 offer? So you would never get e-mails from
22 Mr. Shelby or Mr. White or Mr. Fertitta
23 saying, I'm thinking of offering this fighter
24 this amount, what do you think?

25 Did that ever happen?

1 THE WITNESS: Not that I recall.
2 Especially with Dana and Lorenzo, there was
3 contracts that I did not know about until I
4 saw after I stopped working for UFC.

5 THE COURT: Okay. So other than those
6 two -- they're doing about 10 percent of the
7 deals.

8 Other than the deals they're doing,
9 with you and Mr. Shelby, you're saying you
10 never communicated about compensation levels.
11 So in other words, you never said or he never
12 said to you, I'm thinking of offering this
13 fighter this amount, do you think that's fair
14 or appropriate, what would you do? That never
15 happened?

16 THE WITNESS: I don't think so, because
17 it was a little bit of apples and oranges. We
18 did very different weight classes, so to judge
19 a brand new women's weight class versus my
20 much more established -- I had the oldest,
21 largest weight classes. His weight classes
22 were such a different thing, he wanted a
23 different talent pool.

24 You know, my job is that -- I kind of
25 showed I knew what I was doing. So he and

1 Lorenzo would mostly leave me alone. And then
2 when Sean came in and was doing his weight
3 classes, I wanted to do the same thing for
4 him. Like, I think you're a smart guy, you
5 know what you're doing, go do your thing.

6 THE COURT: So essentially what you're
7 saying is you both keep -- stay in your lane
8 as it relates to your weight classes and what
9 was being offered, because that was your
10 expertise, and you didn't really spend a lot
11 of time looking at fighters in his weight
12 class, and he didn't spend a lot of time
13 looking at fighters in your weight class as
14 far as you know?

15 THE WITNESS: Correct.

16 THE COURT: Okay. Thank you. That
17 helps.

18 BY MR. CRAMER:

19 Q And Mr. Shelby was experienced with his
20 weight classes, and attempted to be consistent in
21 his classes, right?

22 A Sure.

23 Q And you were experienced in your weight
24 classes, and attempted to be consistent in your
25 weight classes, correct?

1 A Correct.

2 Q Okay. Let's talk about some of the
3 different forms of payment that Ms. Grigsby asked
4 you about. She asked you about the
5 fight-of-the-night bonus. There were some other
6 kinds of bonuses, like the knockout-of-the-night
7 bonus, right?

8 A Right.

9 Q There was also a Pay-Per-View payment,
10 correct?

11 A Correct.

12 Q Now, is it fair to say that -- and you said
13 that one of the issues with the show and the win
14 payment was the fact those were set in advance of
15 the fight?

16 A (Nods head up and down.)

17 Q These -- the fight of the night, knockout of
18 the night, Pay-Per-View, those happened after the
19 fight, correct?

20 A Correct.

21 Q And the goal of those types of payment are
22 really to try to align the actual fact of the
23 performance and popularity with the compensation,
24 right?

25 A Well, the popularity had nothing to do about

1 it.

2 Q Well, the Pay-Per-View?

3 A No.

4 Q Well, the fighter draws a lot of
5 Pay-Per-View --

6 A Oh, you're talking about the Pay-Per-View
7 bonus?

8 Q Yeah.

9 A I thought you were saying of-the-night
10 bonuses, sorry.

11 Q Let's talk about the fight of the night and
12 the knockout of the night.

13 A Okay.

14 Q Those are attempting to align the actual
15 fact of the performance with the pay?

16 A Correct.

17 Q And the Pay-Per-View is, in part, attempting
18 to align the actual fact of the popularity with the
19 pay, correct?

20 A Correct.

21 Q Okay. Do you know the direction in terms of
22 the average fight-of-the-night bonus per fighter
23 from, like, 2007 forward, whether that went down
24 substantially?

25 A For the of-the-night bonuses?

1 Q Yes.

2 A No. There was a time, as I said, I'm not
3 sure exactly when it started, but that the
4 of-the-night bonuses were different depending on
5 the show. And then there was a time where they did
6 away with that because fighters would want to avoid
7 the smaller shows, they could fight for a bigger
8 bonus, so then they made it standard for every show
9 that it would be \$50,000.

10 Q All right. I'd like to show you a document
11 from 2015 that actually covers this issue. It's
12 formatted similar to the minimum fight --

13 A Uh-huh.

14 Q -- payment document.

15 So please put the first page of the document
16 up.

17 MR. CRAMER: And, Mr. Madden, can you
18 identify the document?

19 MR. MADDEN: He's working on it. I can
20 give you the Bates number.

21 MR. CRAMER: What's it called? Do you
22 have it?

23 MR. MADDEN: It's on your screen.

24 MR. CRAMER: Oh, it's on my screen.

25 Fighter Bonus Payment, February 2015. It was

1 shown to you at your deposition, it was
2 Exhibit 50 at your deposition. I'm just
3 showing you because it actually -- put up the
4 first page of the document.

5 MS. GRIGSBY: So I'm going to object
6 too because there is no foundation, just like
7 that Joe Silva has testified about --

8 THE COURT: Okay. I agree with you,
9 Ms. Grigsby. Sustained.

10 So, Mr. Cramer, if you want to
11 establish a little bit of foundation as to
12 whether or not this witness knows this
13 document.

14 MR. CRAMER: Okay. This is PCCX-88.
15 And please take that down. Please take that
16 down.

17 Mr. Silva just testified about the
18 amount -- the dollar amount of
19 fight-of-the-night bonuses, and this document
20 contains actual figures on --

21 THE WITNESS: No, it doesn't.

22 THE COURT: Well, the question is --

23 MR. CRAMER: Okay.

24 THE COURT: Hold on, Mr. Silva.

25 It's not whether or not he was

1 involved. The question is whether or not he
2 is aware of this particular document --

3 MR. CRAMER: Okay.

4 BY MR. CRAMER:

5 Q Are you aware of this document?

6 THE COURT: -- and what the figures
7 are.

8 MR. CRAMER: Fair enough, Your Honor.

9 BY MR. CRAMER:

10 Q Are you aware of this document? Have you
11 seen it before?

12 A I am aware of the document.

13 Q Okay. You'd seen it during the course of
14 your work at the UFC?

15 A Right. Now, there was other bonuses, too,
16 that were not discussed that were not fight of the
17 night, and that's what I believe this chart
18 references, that for a long period of time what
19 would happen is after a show would end, the next
20 day, for Monday, I would summarize the card to
21 Dana, Lorenzo, Sean, and I'd say, here's what
22 happened in every fight, and here's money that's
23 not knockout of the night or fight of the night,
24 here's extra bonuses that I think these guys are
25 worth. And I would make suggestions, this guy

1 lost, but it was a good fight, he did that, I think
2 he should get 3,000 extra; I think that that guy
3 should get 10,000 extra. And I'd go down the whole
4 card.

5 Q Right.

6 A Then Dana and Lorenzo would look at that,
7 and they would decide did they agree with me, do
8 they want to give more or do they want to give
9 less. But that had nothing to do with knockout of
10 the night or performance of the night, that was
11 different bonuses.

12 Q Okay. You can take that off.

13 So for the bonuses that you just described,
14 that was another effort on your part to align
15 compensation with actual performance; is that
16 right?

17 A Correct.

18 Q Okay. All right. Let's move to another
19 topic briefly.

20 You mentioned some fighters, Ryan Bader,
21 Rory MacDonald, Lyoto Machida, and Mousasi, who you
22 said left the UFC even though the UFC had made them
23 an offer.

24 Now, it's fair to say that if UFC had
25 matched the offer from the other promotion, UFC

1 could have kept those fighters, right?

2 A Correct.

3 Q And all of those fighters that I just
4 mentioned left the UFC in 2015, correct?

5 A Correct. So those are just ones that are
6 fresh in my mind.

7 Q Okay. All right. Let me ask you this. I
8 asked you at your deposition -- why don't we put up
9 document ZUF-296713. It's JCCX-28. And it's a
10 series of e-mails between a man named Greg Kalikas
11 between April 25th, 2011, and June 2011.

12 Kalikas was a fighter representative; is
13 that right?

14 A Correct.

15 Q Who represented Stipe Miocic; is that right?

16 A Correct.

17 Q Okay. And let's turn to the bottom of
18 page 2. You say: "If he wins again, I'll sign
19 him, but it has to be against a decent opponent."

20 Now turn to the top of page 3, which is the
21 continuation of this e-mail.

22 You say: "Beating guys with crappy records
23 won't convince anyone he's ready for the big
24 leagues."

25 So at the time, Miocic was in another

1 promotion; is that right?

2 A Correct.

3 Q Where was he?

4 A Just fighting small, local promotions.

5 Q Right.

6 And you said to him or his manager: "In
7 order to make it to the UFC, you've got to beat
8 better guys, can't beat guys with crappy records."

9 Is that right?

10 A Correct.

11 Q And the big leagues here is the UFC? That's
12 what you're referring to, right?

13 A Correct. Or any big leagues.

14 Q But here you're referring to the UFC?
15 You're talking about him coming to the UFC?

16 A Correct.

17 Q Okay. And you told me in your deposition
18 you sent hundreds of e-mails to fighters'
19 representatives telling them that in order for
20 fighters to be brought up to the big leagues, the
21 fighters would have to have more experience against
22 better people; is that right?

23 A Correct.

24 Q And when, in fact, fighters did start to win
25 at other lesser promotions, and they started

1 beating good guys with good records, you, on many
2 occasions, did bring them up to the UFC, correct?

3 A Correct.

4 Q Okay. At your deposition, you told me that
5 all things being equal, if you knew a fighter was
6 worthy of being on a main card, you'd be more
7 likely to put that fighter in a position on the
8 main card in his last fight if that fighter agreed
9 to commit to a new contract, correct?

10 A Correct.

11 MR. CRAMER: All right. That's all the
12 questions I have.

13 THE COURT: All right. Thank you,
14 Mr. Silva. And you are excused. I
15 appreciate, again, you coming in today, and
16 wish you a speedy recovery.

17 THE WITNESS: Thank you, Your Honor.

18 MR. CRAMER: Thank you, Mr. Silva.

19 THE COURT: All right. Then, Counsel,
20 is there anything else that we need to do
21 today? I want to address the issue of joint
22 exhibits and having them be admitted.

23 Mr. Cramer, Ms. Grigsby, I want to make
24 sure that everything that we need to have
25 admitted is admitted into the record.

1 MR. CRAMER: We have a list of all of
2 the exhibits from -- on the plaintiffs' side
3 from the Manning closing and from Mr. Silva.
4 I believe we've already jointly moved to admit
5 the other exhibits on the plaintiffs' side.
6 Right? From Singer and Zimbalist. Go ahead.

7 MS. GRIGSBY: No, I was going to say it
8 looks like we have some exhibits from Manning
9 that we would like to clean up as well as a
10 couple from today.

11 MR. CRAMER: Perhaps, Your Honor, if we
12 would have some time to confer --

13 THE COURT: Why don't you submit a
14 joint stipulation for the exhibits. And
15 again, only as to exhibits that have already
16 been mentioned or discussed, that I have
17 allowed to be mentioned or discussed. So I
18 don't expect there to be any, hopefully,
19 disagreement or argument about it. Hopefully
20 you all should be able to agree to what has
21 been shown, I have allowed to be shown.
22 Anything that has been shown to a witness in
23 these proceedings should be admitted as an
24 exhibit to the public part of the record. If
25 it wasn't shown, then it doesn't need to be

1 admitted unless there was an agreement that it
2 would be admitted jointly and I approved it on
3 the record.

4 Okay. Any clarity needed for that?

5 MR. CRAMER: No, Your Honor. Thank
6 you.

7 THE COURT: All right. Ms. Grigsby?

8 MS. GRIGSBY: No, Your Honor.

9 THE COURT: All right. And,
10 Ms. Grigsby, did you look at the rulings yet?

11 MS. GRIGSBY: So, I did not. I was
12 hoping that I would have lunch to.

13 THE COURT: I mean, obviously Mr. Silva
14 went faster than I had anticipated. In
15 part because he didn't have to read that much.
16 And so we actually expected this to go longer
17 than it did. And so that's fine. I mean, the
18 minutes from this proceeding today won't be
19 filed for a day or so. But, again,
20 Ms. Grigsby, certainly you want to look at
21 those. There are two documents where I
22 actually denied the motions to seal. And so
23 to the extent that you wanted clarity on that,
24 then perhaps we can discuss that.

25 If you want to take a few minutes now

1 to look at them, go ahead and do that. I'll
2 sit on the bench for a few minutes. If you
3 want to fire up your laptop. That way we can
4 address it here in court today. We have a
5 little bit of extra time.

6 So we'll be off the record at this
7 point in time.

8 (Recess taken at 11:46 a.m.,
9 proceedings resumed at 12:03 p.m.)

10 THE COURT: Back on the record.

11 This is PCCX-41, and I will just let
12 you know what we're going to do.

13 Page 2, I will redact that portion.

14 Page 5 will not be redacted.

15 So on page 6, the consistent and strong
16 top will not be redacted.

17 Highly profitable with significant
18 operating leverage chart will be redacted.

19 The consistent high cash generated
20 chart will be redacted.

21 The substantial contracted revenue
22 coverage will not be redacted.

23 Page 9, neither one of those charts
24 will be redacted.

25 Page 10, neither one of those blocks

1 will be redacted.

2 Page 11, both of those will be
3 redacted.

4 Page 14, that box will be redacted.

5 Page 15, that box will be redacted.

6 Page 16, all of those boxes will be
7 redacted.

8 Page 17, all of those boxes -- that
9 whole box on page 17 will be redacted, as well
10 as the box on page 18, that will also be
11 redacted.

12 Page 20, that will not be redacted.

13 Page 21 will not be redacted.

14 Page 22 will not be redacted.

15 Page 23 will not be redacted.

16 Page 24 will not be redacted.

17 Page 25 will not be redacted.

18 Page 26 will not be redacted.

19 Page 27 will be redacted.

20 Page 28, 29 will be redacted.

21 Page 30 will be redacted.

22 Page 31 will not be redacted.

23 Page 32 will be redacted.

24 Page 33 will be redacted.

25 Page 34 will not be redacted.

1 Page 35 will not be redacted.

2 Page 36 will be redacted.

3 Page 38 will not be redacted.

4 And then page 39 will be redacted.

5 Okay. Anything else we need to do
6 then?

7 MR. MADDEN: Yes, Your Honor. I spoke
8 with Ms. Grigsby, and since the class
9 certification and summary judgment briefing
10 were submitted, there has been substantial
11 unredacting of the expert reports. Much of it
12 is now public.

13 THE COURT: Right.

14 MR. MADDEN: And we would like to
15 request the ability to file a newly redacted
16 based on what is available and still
17 under-seal versions of those briefs.

18 THE COURT: Versions of the briefs, you
19 said?

20 MR. MADDEN: Yes.

21 THE COURT: That's fine. That seems
22 appropriate.

23 Anything else?

24 MR. CRAMER: Yes, Your Honor. So I
25 guess I would miss this case if I weren't

1 working on it every day. Your Honor has
2 denied the summary judgment motions without
3 prejudice, you said, because the parties might
4 want to include something from this hearing in
5 those motions.

6 And so I was raising now in this
7 potential interregnum while we're awaiting
8 Your Honor's decision on class certification
9 whether now might be the time for Zuffa to
10 either resubmit its summary judgment motion,
11 and we'll submit it on the papers, or have a
12 date to submit a new summary judgment motion
13 so that we can get that part of the case
14 going.

15 THE COURT: We can. But what I fully
16 anticipate, which I'm sure you all do too,
17 given the nature and size of this case, is
18 that whatever decision I issue on the class
19 certification motion will be appealed. And
20 it's very likely an appeal could go a long
21 way. And so it's unlikely that I would decide
22 a motion for summary judgment until the motion
23 for certification played itself out. I don't
24 know if -- I mean, I guess I could, but I
25 don't know that I necessarily will do that.

1 I'll hear from you, Ms. Grigsby, about
2 that.

3 I mean, it could be potentially a few
4 years, right, practically speaking, two to
5 three years after -- for the appeal.

6 MR. CRAMER: That's if the 9th Circuit
7 takes it. They don't -- they take very few
8 petitions --

9 THE COURT: Well, I don't know that
10 they're going to stop there if they don't
11 prevail. And I don't know that you would stop
12 there either, Mr. Cramer, if you didn't
13 prevail.

14 So I am assuming, given the amount that
15 both sides have invested in this case and the
16 size of it, that whoever doesn't prevail would
17 seek to take this case all way to the Supreme
18 Court. That may or may not happen, but --

19 MR. CRAMER: I don't think a denial of
20 a petition on 23F, which is the interlocutory
21 appeal of class certification, can go to the
22 Supreme Court.

23 THE COURT: I don't know that it can
24 either. But what we know is the antitrust
25 ground is shifting. I don't know that either

1 side, if they didn't prevail, wouldn't take a
2 shot, Mr. Cramer.

3 MR. CRAMER: Okay.

4 THE COURT: And I'm saying that because
5 you're saying that to me now. If you were not
6 to prevail in my motion -- in your motion to
7 certify the class, or I were to take some
8 substantial whacks at the class, I can't say
9 that you're committing to me that you would
10 never try to pursue fully the appellate rights.
11 I think that Ms. Grigsby can do the same. And
12 what I'm saying is, is that practically
13 speaking, it can take a little bit of time,
14 however it gets there. Right? And so --

15 MR. CRAMER: Fair enough, Your Honor.

16 THE COURT: -- Mr. Cramer, I'm saying
17 that mostly, Ms. Grigsby, for you and
18 Mr. Isaacson as it relates to the motion, I'm
19 unlikely to decide it at a minimum before the
20 9th Circuit would decide whatever appeal
21 whichever side files, whether it is the
22 plaintiffs or the defendants.

23 So you all tell me. Because at that
24 point, it seems it's just a lot of effort and
25 work to put into this when this is an area

1 that we know that as relates to antitrust law
2 is evolving.

3 And so I expect that there may be some
4 pushback, and also possibly that there could
5 be some decision by the circuit that isn't a
6 complete sort of affirmation or a reversal of
7 whatever decision I rendered.

8 So does it seems to me that it may make
9 sense to wait to file the motions, but it
10 certainly seems to me it make sense for me to
11 wait until, at least as it relates to the 9th
12 Circuit and an appeal by either side to my
13 decision, that that would play itself out.

14 Mr. Isaacson?

15 MR. ISAACSON: We agree with that, Your
16 Honor. We would like to file the summary
17 judgment briefs based on the correct legal
18 landscape at the time, and we wouldn't want to
19 have to file another round of summary judgment
20 briefs, so --

21 THE COURT: Right. And that's what I
22 thought. And also, in part, because I said
23 I -- I mean, this case brings all sorts of
24 interesting issues to the floor. I have not
25 decided in any way how I'm going to rule on

1 the motion to certify the class at this point.
2 And so that decision, I think, is
3 significantly impacting the other dispositive
4 litigation.

5 The only question is whether or not
6 there's anything else that needs to happen on
7 this case.

8 Mr. Cramer, you talked about the issue
9 of what needs to happen now. I don't know if
10 there's anything that needs to happen in this
11 case moving forward. I would hope that you
12 all are done for now with sort of the
13 discovery and litigation. If you weren't, I
14 would be inclined to stay it, but I don't know
15 that there's anything else that needs to be
16 stated at this point.

17 Ms. Grigsby?

18 MS. GRIGSBY: No, Your Honor. We
19 completed discovery in 2017.

20 THE COURT: That's what I thought. But
21 I just -- I mean, Mr. Cramer's comment about,
22 I think about the case every day or at least --

23 MR. CRAMER: I have been.

24 THE COURT: Well, and I appreciate that
25 over the last few months. But I just wanted

1 to make sure there's nothing outstanding that
2 I was aware of that was still happening at the
3 sort of ground level of discovery.

4 So okay. So you all will then submit
5 -- I think the only thing that's left is you
6 will submit a joint stipulation as it relates
7 to exhibits. Is that right?

8 MS. GRIGSBY: Yes, Your Honor.

9 MR. CRAMER: Yes, Your Honor.

10 THE COURT: Okay. And I think I
11 resolved, as far as I can tell, all of the
12 outstanding motions to seal. At least -- I
13 think there may be one or two that I have to
14 look at in relation to the hearings, but I
15 think I resolved most of the motions to seal.

16 So anything else we need to do on
17 anything that's outstanding with respect to
18 this case at this time, other than for me to
19 issue my decision on the motion to certify the
20 class?

21 MR. CRAMER: No, Your Honor.

22 MS. GRIGSBY: No, Your Honor.

23 THE COURT: All right then. So we will
24 be adjourned on this case. Thank you.

25 (Proceedings adjourned, 12:13 p.m.)

CERTIFICATE OF REPORTER

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I, KIMBERLY L. RIBARIC, do hereby
certify that I reduced the notes of the foregoing
proceedings to typewriting; that the foregoing is a
true record of said proceedings to the best of my
knowledge and ability; that I am neither counsel
for, related to, nor employed by any of the parties
to the action in which these proceedings were held;
and further, that I am not a relative or employee
of any attorney or counsel employed by the parties
hereto, nor financially or otherwise interested in
the outcome of the action.

IN WITNESS WHEREOF, I have hereunto set
my hand this 24th day of September, 2019.

Kimberly L. Ribaric, RPR, CCR
Notary Registration No. 348266
Commonwealth of Virginia at Large

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